160 U.S. 37

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

THE LAW ASSOCIATION OF PHILADELPHIA

WILLIAM P. SPALDING, PLAINTIFF IN ERROR,

vs.

WILLIAM CHANDLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED FEBRUARY 9, 1892.

(14,973.)

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a STATE OF MICHIGAN, } ss:
County of Chippewa, }

I, Wm. Webster, register of the circuit court for the county of Chippewa, in chancery, do hereby certify that the annexed papers are the original files, exhibits, and copy of the testimony in the cause of William P. Spalding *vs.* William Chandler.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Sault Ste. Marie, this 30th day of June, A. D. 1890.

[SEAL.]

WM. WEBSTER,
Register in Chancery.

Endorsed: Filed July 25, 1890. Chas. C. Hopkins, clerk supreme court.

1 State of Michigan Supreme Court.

WM. P. SPALDING, Complainant and Appellant, }
vs.
WM. CHANDLER, Defendant and Appellee. }

Bill of Complaint.

The Circuit Court for the County of Chippewa. In Chancery.

Humbly complaining, your orator, William P. Spalding of Sault Ste. Marie, Chippewa county, Michigan, respectfully represents unto this honorable court:

1. That prior to the 5th day of December, A. D. 1859, one Byron B. Adsit entered for the purposes of pre-emption according to the provisions of the act of Congress in such case made and provided, the following-described lands and premises situate in the county and State aforesaid, to wit: Lot designated on the map of the United States survey in the land office at Marquette, Michigan, as Indian reserve (subject to all the provisions, requirements and conditions of the act of Congress granting to the State of Michigan a right of way for canal purposes around the Falls of St. Marie in said State,) of section number six (6) in township forty-seven (47) north
2 range one (1) east containing thirty-six (36) and fifty-one hundredths ($\frac{51}{100}$) acres and that afterwards having fully complied with all the requirements of the act of Congress with reference to the pre-emption entry of the public land, paid to the proper officer of United States land office at Marquette, the minimum price of one dollar and twenty-five cents ($1.25) per acre and received a certificate to the effect that he was entitled to a patent therefor from the United States.

2. That at the date of said Adsit's pre-emption of said land, the same was properly the subject of pre-emption purchase and said Adsit was entitled by law to the patent therefor from the United States.

3. That said pre-emption being fully completed as required by law and said Adsit having received the proper certificate, applied to the proper officer of the United States for the issuing of a patent therefor to him, but a patent therefor was refused, the officers of the Land Office at Washington claiming as matter of law that said land was not properly subject to pre-emption purchase, and assigning no other reason for the refusal to issue a patent to said Adsit.

4. That on the 7th day of August A. D. 1860, said Byron B. Adsit by quitclaim deed, conveyed to your orator all his right, title and interest in and to said lands conveying said pre-emption to your orator, and said, your orator, is now the owner of the same, which said deed is recorded in the office of the register of deeds, for Chippewa county, in Liber (8) of Deeds on pages four hundred and twelve and four hundred and thirteen (412 and 413,) and for greater certainty to the contents of said deeds your orator refers to the same and the record thereof, which will be produced and proven as this court shall direct.

5. That the United States retaining the title to said lands left your orator without any remedy, by application or proceeding in the courts until on or about the year 1882.

3 6. That some time in the year 1881, one William Chandler, whom your orator makes a defendant hereto, located certain land scrip on a portion of said lands and applied to the United States for and received a patent therefor, that upon your orator learning of the location of said land and the application for said patent by said Chandler, caused to be presented to the officer of the General Land Office of the United States at Washington, his protest and objection in writing and under oath, against the issuing of a patent for said lands or any part thereof to said William Chandler, or any other person or persons and respectfully represented that a patent thereafter be issued to your orator, which said protest and objection was dated the 22nd day of December, A. D. 1881, and for greater certainty as to its contents, your orator refers to the same when produced and proven, as this court may direct.

7. That said officers of the General Land Office disregarded your orator's protest and objection and issued a patent thereof, to said William Chandler, which upon the record, vests the title in fee in said Chandler. That the issuing of the same was a fraud upon the rights of your orator in the premises, and in violation of his legal and equitable rights in the premises. That of right a patent for said lands should have issued to your orator. That his claim is superior in, and prior to the claim of said Chandler and of right your orator is entitled to the enjoyment of said lands and premises.

8. That the description of the lands included and conveyed by said patent is as follows, to wit: Beginning at the intersection of the principal meridian of Michigan with St. Mary's river being ninety (90) links north of St. Mary's canal and being northwest corner of the northeast part of claim three, thence 71 degrees 39 min. east four (4) chains, thence north 4 degrees 37 min. west 3.65 chains

to the northwest corner of said tract, being the initial point
4 of the survey of said tract, thence south 4 degrees 37 min. east one (1) chain, thence north 77 degrees 10 min. west 15 chains; thence north 35 degrees 23 min. east 18.89 chains, thence north 18 degrees 39 min. west 2.06 chains, then north 80 degrees 40 min. west 1.66 chains, thence south 88 degrees 15 min. west 4.01 chains, thence north 84 degrees 41 min. west 4.06 chains, thence south 85 degrees 23 min. west 3 chains, thence north 89 degrees 54 min. west 4.01 chains; thence south 79 degrees 57 min. west 4.02 chains; thence north 69 degrees 19 min. west 8.09 chains to the initial point of survey, being the northwest corner of said tract containing nine and ten and three-fourths hundredths acres, being a portion of section number six (6) in township number forty-seven (47) north, range one (1) east, designated upon the official plat of the survey made by United States deputy surveyor, Thomas Whelpley, in 1854 and 1855 under and by virtue of an act of Congress approved September 26th, 1850, entitled An act providing for the examination and settlement of claims for land at the Sault Ste. Marie, Michigan, which survey was approved by the surveyor general of the United States, September 14th, 1855, and now on file in the office of the Commissioner of the General Land Office at Washington, as part of the Indian reservation, said tract being bounded by the St. Mary's river on the east, north and west, and by the St. Mary's Falls canal and Portage street extended on the south and being a part of the lands pre-empted by said Adsit.

That no portion of the money paid by said Adsit for said land has ever been repaid by the United States to said Adsit or your orator, and said land is worth the sum of five thousand dollars and upwards, therefor- your orator prays that he may be declared by the court to be entitled to said lands and premises. That his right to the same is prior and paramount to that of said Chandler.
5 That said Chandler may be declared to hold the titles to said lands in trust for the use and benefit of your orator. That he may be ordered and decreed to execute and deliver to your orator a good and sufficient deed of conveyance of the lands covered by said patent, so that the title in fee will be vested in your orator, where of right it should be. And that upon the failure or refusal of said Chandler to execute such deed within reasonable time to be fixed by the court, then said decree stand and be recorded in lieu thereof. That your orator may have the gracious writ of subpœna directed to the said defendant commanding him to appear and answer all and singular, this bill of complaint and abide the decree of the court herein.

And your orator will ever pray etc.

WILLIAM P. SPALDING,
Complainant.

LAWRENCE F. BEDFORD,
Solicitor for Complainant.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

Be it remembered that on this 21st day of November A. D. 1888, before me personally appeared William P. Spalding, the above-named complainant who being first duly sworn did depose and say that he had read the foregoing bill of complaint by him subscribed and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

CLEMENT C. YERKES,
Notary Public, Chippewa Co., Mich.

6 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING, Complainant, }
vs.
WILLIAM CHANDLER, Defendant. }

SIR: Please take notice that the appearance of the defendant in this cause has been duly entered in the office of the register of said court with an order that you deliver to me a copy of the bill in this cause within fifteen days after service on you of a notice of said order or that said bill will be dismissed, etc.

Dated Dec. 8th, 1888.

J. H. GOFF,
Solicitor for Defendant.

Lawrence F. Bedford, Esq., solicitor for complainant.

Defendant's Answer.

STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING, Complainant, }
vs.
WILLIAM CHANDLER, Defendant. }

The answer of William Chandler, defendant, to the bill of complaint of William P. Spalding, complainant.

This defendant reserving to himself all the right of exception to said bill of complaint for answer thereto says:

This defendant denies that, prior to the 5th day of December, A. D. 1859, one Byron B. Adsit entered for the purpose of
7 pre-emption according to a provision of an act of Congress in such case made and provided the lands described in paragraph one of complainant's bill. Denies that said Adsit fully complied with all the requirements of the act of Congress with reference to the pre-emption entry of the public lands.

And this defendant further answering says that he has no knowledge as to whether said Adsit paid to the proper officer of the

United States land office at Marquette the minimum price of one dollar and twenty-five cents per acre save the allegations in said bill contained and leaves the complainant to his proofs relative thereto and denies that said Adsit received a certificate to the effect that he was entitled to a patent therefor from the United States.

2. This defendant denies that the said land at the date of said Adsit's alleged pre-emption was properly the subject of pre-emption purchase, and denies that said Adsit was entitled to a patent therefor from the United States.

3. And this defendant further answering says it may be true for anything this defendant knows to the contrary that said Adsit applied to the proper officer of the United States for issuing of a patent therefor to him, and that a patent was refused, and that the officer of the Land Office at Washington claimed as a matter of law that said land was not properly subject to pre-emption and assigned no other reason for the refusal of the issuing of a patent to said Adsit. But this defendant is an utter stranger to all and every such matters.

4. And this defendant further answering says that as to the matters alleged in the 4th paragraph of complainant's bill he has examined the records referred to and finds a record of a deed purporting to be made by said Adsit to the complainant and pretending to convey to complainant all the right, title and interests of said Adsit in and to the lands aforesaid, but this defendant denies that said Adsit at the time of making of said deed or at any other time had any right, title or interest in said lands, and denies that said deed conveyed any right, title or interest in said lands to complainant and denies that complainant has any right, title or interest therein and avers that said complainant was not a *bona fide* purchaser from said Adsit.

5. This defendant admits that the United States retained the title to said lands until and up to the time this defendant made the location of the land script as hereinafter set forth.

6. This defendant further answering admits that in the year 1881 he located certain land scrip on a portion of the said lands and applied for and received a patent therefor, and further answering this defendant says that he has never heard or been informed, save by complainant's bill, that complainant upon learning of the location of the said land and the application for said patent by this defendant, caused to be presented his protest and objection as alleged in the sixth paragraph of complainant's bill but this defendant believes the fact to be as set forth in said sixth paragraph.

7. This defendant further answering admits that the patent to him as aforesaid issued vests the title in fee in this defendant but denies that the issuing of the same was a fraud upon the rights of complainant in the premises and in violation of his legal and equitable rights in the premises.

Denies that of right a patent for said land should have issued to complainant. Denies that complainant's claim is superior in and prior to the claim of this defendant and denies of right the com-

plainant is entitled to the enjoyment of the said lands and premises.

8. This defendant denies that the lands included and conveyed by said patent are correctly described in the eighth paragraph of complainant's bill.

9 9. This defendant admits that the lands included in his said patent are worth the sum of five thousand dollars and avers that they are worth forty thousand dollars and over.

10. This defendant further answering says that the pretended pre-emption of the said Byron B. Adsit as set forth in complainant's bill was null and void for the following reasons:

1st. Because at the time of the alleged pre-emption the said lands aforesaid were included within the limits of lands which had been selected as a site of a village and town.

2nd. Because before and at the time of said alleged pre-emption the said lands were reserved from the public lands by the President of the United States as a town site.

3rd. Because at the time of the alleged pre-emption the said lands were part of lands which had been confirmed as a town site by an act of Congress entitled "An act providing for the examination and settlement of claims for lands at the Sault Ste. Marie, Michigan," enacted Sept. 26th, 1850.

4th. Because at the time of said pretended pre-emption of said lands by said Adsit the same were not subject to pre-emption rights.

11. And the defendant further answering denies that complainant is entitled to the relief or any part thereof in said bill of complaint demanded and prays the same advantage of the answer as if he had pleaded or demurred to the said bill of complaint and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WM. CHANDLER.

J. H. GOFF,
Solicitor and of Counsel for Defendant.

10 STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

On the 18th day of December, A. D. 1888, before me personally appeared William Chandler and made oath that he has read the foregoing answers subscribed by him and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief and as to those matters he believes them to be true.

JAY W. SUTTON,
Notary Public in and for Chippewa County.

Complainant's Replication.

The Circuit Court for the County of Chippewa. In Chancery.

The replication of William P. Spalding, complainant, to the answer of William Chandler, defendant.

This repliant saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain and prove his bill of complaint to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of William Chandler is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

LAWRENCE F. BEDFORD,
Solicitor for Complainant.

Dated 26th day of December, A. D. 1888.

STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

SIR: Please take notice that I claim the right under the statute to an examination of the witnesses in this cause in open court as in a suit at law.

Dated Dec. 27th, 1888.

Yours, &c.,

J. H. GOFF,
Solicitor for Defendant.

Lawrence F. Bedford, solicitor for complainant.

STATE OF MICHIGAN:

In the Circuit Court for the County of Chippewa. In Chancery, January 18th, 1889.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

The above-entitled cause will be brought on for trial at the next term of this court, notice having been served on the part of the de-

fendant on L. F. Bedford according to the statute and rules of this court. You will please place said cause on the issue docket of this court for said term.

JOHN H. GOFF,
Solicitor for Defendant.

To the clerk of said court.

12 In the Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

Alonzo C. Raymond being duly sworn doth depose and say:

That he is one of the counsel for complainant in the above-entitled cause. That he has applied to the departments in the Land Office at Washington for certified copies of documents and papers necessary to be introduced in evidence on behalf of said complainant in said cause; that he is informed and verily believes that it will be three weeks or more before he can procure the same from the departments, owing to the delay necessary in making said certified copies; that this information as to the time is furnished him by the person having charge of said documents, and whose duty it is to furnish the certified copies of the same. That he is present in Washington giving personal attention to the procuring of said papers, and verily believes that he can have the same ready to be used in said cause by the 1st of March. That from the examination which he has made of said cause which has been at considerable length, he verily believes that said complainant cannot safely proceed with the trial thereof without having said papers duly certified, and he thinks that in order that justice may be done and rights of the parties fully protected, that the trial of said cause should be delayed until copies of said papers are procured.

And further deponent sayeth not.

ALONZO C. RAYMOND.

Subscribed and sworn to before me this 31st day of January, A. D. 1889.

[SEAL.] RUFUS H. THAYER,
Notary Public.

13 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING, Complainant,
vs.
WILLIAM CHANDLER, Defendant.

The bill was filed in this cause November 22nd, 1888. Issue was duly joined, and the case heard in open court March 12th, 1889. A very brief oral argument was had at that time and the case left with the agreement that counsel for the respective parties were to furnish briefs. The briefs were furnished about the last of June, 1889, about the time I had closed the last term of court before the summer vacation. Circumstances were such that I could not well devote the vacation to an examination of the case. I again commenced holding court in my own circuit on the last of August, and from that time until about a week ago have been busily engaged in the work of my circuit. I commenced the examination of this case about ten days since, and have devoted all the time possible to the consideration of the important question involved. I have arrived at a conclusion, but frankly say that I have not had the time nor the books at my disposal to give it the attention I would like. As my term of office as circuit judge is about expiring I can take no longer time to consider it. I have no time to enter into an elaborate discussion of the questions involved, and shall very briefly announce the conclusions reached.

The bill sets forth that Byron B. Adsit pre-empted the land in dispute December 5th, 1859. That he complied with the law and received a certificate from the proper land officers at Marquette entitling him to a patent. That he applied for a patent and was refused on the ground that the land was not subject to pre-
14 emption purchase. August 7th, 1860, Adsit quitclaimed to complainant, which deed was recorded. That the United States retained title until 1882. That in 1881 defendant located the land with Porterfield scrip. That on the 22nd of December 1881, complainant protested against any patent being issued to Chandler. That his protest was disregarded and patent issued to defendant. And prays that the court may declare him entitled to the land and that Chandler holds the same in trust for him. The title to this land remained in the Government until a patent issued to the defendant Chandler, in 1882. The complainant must, therefore, show a superior title to that of the defendant in order to entitle him to recover. We are, therefore, concerned only to ascertain whether he had made out by his proofs such superior title.

Statement of Facts.

The first papers appearing in the case are the affidavit of Charles C. Childs and William F. Clitz, dated October 10th, 1859, stating in substance that Adsit was a citizen of the United States, over twenty-

one years of age and a single man. That on September 10th, 1859, Adsit took possession of and commenced improvements upon the lot in question, together with other lands designated as the Indian reserve, in section six, town. forty-seven. That he had built upon the premises a comfortable house and had removed into the same and was making the same his residence.

The next is the affidavit required by the pre-emption law of 1841, made by Adsit, dated December 5th, 1859, and is a compliance with the statute. On the last date the register and receiver reported to the Commissioner of the General Land Office at Washington that they had examined the proofs in Adsit's claim, and recommended the allowance of the claim, and issued to Adsit the usual receipt.

15 No declaratory statement appears in evidence. The affidavits and report of the register and receiver were forwarded to the Commissioner, and on April 9th, 1860, the Commissioner rejected and cancelled Adsit's claim on the ground that the land was not subject to pre-emption, instructing the register and receiver to note the cancellation and notify Adsit to apply for repayment of his purchase-money.

On the 7th of August, 1860, Adsit quitclaimed to the complainant for a mere nominal consideration. Adsit did not appeal from the decision of the Commissioner.

The complainant did not record his deed from Adsit until 1881, after he had heard that defendant had located that portion of this Indian reserve involved in this case with Porterfield scrip. He then recorded his deed and filed his protest against the issueing of a patent to defendant. The protest was dated December 23, 1881.

The application of Chandler was made May 17th, 1881, to the register and receiver. The application was rejected by them, and an appeal taken to the Commissioner at Washington. Under date of October 13th, 1881, the Commissioner reversed the decision of the register and receiver and ordered a patent to issue to defendant. The complainant did not appeal to the Secretary of the Interior, and a patent was duly issued to Chandler. Chandler took possession of the property and some time after valuable improvements were commenced upon it, a canal dug and an electric light plant erected and completed.

The complainant made no protest or objection after making his protest to the Commissioner until he filed the bill in this case November 22, 1888. The work of constructing this canal and electric railroads commenced in September, 1887, and the canal was finished about the first of February, 1888. The complainant resided all this time at Sault Ste. Marie and knew of these improvements.

16 The construction of the Sault Ste. Marie canal by the act of Congress and of the State of Michigan, divided this Indian reserve into three parts, two of which were north of the canal and on- part south. Adsit made no improvements on two of these.. His house was built on the western part north of the canal. The testimony shows that he built a fence around a small portion of it where he had a garden; but it is very evident that the lands were not fit

for agricultural purposes. The Indians from 1846 down to 1885 occupied portions of this reserve, particularly the eastern one north of the canal, constructed houses and lived in them, (most of them if not all were citizens of the United States,) sold their fish to boats passing through and to citizens of the village, and occasionally occupied other portions of the tract.

The alleged pre-emption land was described in Adsit's papers as follows:

"Lot designated on the map of the United States survey in land office at Marquette, Michigan, as Indian reserve subject to all the provisions, requirements and conditions of the act of Congress entitled 'An act granting to State of Michigan the right of way and a portion of the public land for the construction of a ship canal around the Falls of St. Mary in said State,' approved August 26th, 1852, in section number six, township forty-seven, north of range one east, containing thirty-six and $\frac{50}{100}$ acres."

Prior to the pre-emption by Adsit the land in dispute was included within the limits of the village of St. Mary. The act incorporating the village of St. Mary was repealed March 11th, 1851.

An examination of the documents introduced in evidence and of the maps and surveys made by the authority of the Government, convince me that this land had been selected as a part of the village of Sault Ste. Marie, and the repealing act of the legislature does not affect the question.

17 *Conclusions of Law.*

1. In Warren *vs.* Van Brunt, 19th Wallace, 646, it is held that there is no legal subdivision of public land less than a quarter of a quarter section, or forty acres, except in the case of fractional sections.

Whether that applies to this case or not is doubtful. But three such separate and distinct parcels of land as are these cannot be pre-empted by occupancy of only one; the occupancy of one part in such cases does not take with its occupancy of the other two. Adsit's proofs fail to show that he was entitled to either one of these parcels.

2. The pre-emption law of 1841 prohibited the pre-emption of lands included within the limits of any incorporated town or selected as the site of a city or town.

Revised Statutes, section 2258.

This land had been selected for such a site and could not therefore be pre-empted.

3. It prohibited also the pre-emption of lands actually settled or occupied for purposes of trade and business and not for agriculture. This was not occupied for agriculture. It was occupied before, and during, and after Adsit's alleged occupancy by the Indians who were engaged in the business of trade.

4. No preliminary statement having been made or filed by Adsit his pre-emption fails.

5. The complainant has been guilty of laches and abandoned his claim.

7. When a party defeated in one jurisdiction has the right of appeal to a higher jurisdiction, and neglects to do so, it will be presumed that he is content with the decision of the inferior jurisdiction.

Applying this principle to this case, there can be no doubt as to the laches of this complainant and his abandonment of his
18 claim. Complainant and his grantor both failed to exhaust the remedy provided by law for a determination of the claim. We hear nothing of any occupation or improvement after the cancellation of Adsit's claim in 1860. For twenty years neither Adsit nor complainant did anything which can be construed into an insistance of their rights. When defendant purchased his scrip and located this land there was neither occupancy on the part of the complainant nor anything else to notify him of complainant's claim. It is only after the location of the land by defendant that we find complainant taking any steps whatever. Then he files a protest with the Commissioner at Washington, which protest is overruled by the Commissioner. Again he fails to appeal and remains silent for nearly eight years thereafter. Even if complainant had any rights at the time of this last contest before the Commissioner, defendant had the right to rely upon the neglect of the complainant to appeal to the Secretary and to believe that complainant had abandoned his claim. Defendant afterwards took actual, open and notorious possession of the property; and parties acting on defendant's title, together with the defendant expended large sums of money and valuable improvements, without any further notice or protest on the part of the complainant.

The bill must be dismissed.

19 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING, Complainant,
vs.
WILLIAM CHANDLER, Defendant.

At a session of said court held at the court-house in the village of Sault Ste. Marie, on the eighteenth day of October, in the year one thousand eight hundred and eighty-nine.

Present: Hon. Claudius B. Grant, circuit judge.

This cause having come on to be heard upon the pleadings and proofs and having been argued by counsel for the respective parties, it is ordered, adjudged and decreed that the complainant's bill of complaint be and the same is hereby dismissed, with costs to the defendant to be taxed.

C. B. GRANT,
Circuit Judge.

(Countersigned.)
WM. WEBSTER, *Register.*

20 STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING, Complainant,
vs.
WILLIAM CHANDLER, Defendant.

SIRS: You are hereby notified that a decree in the above-entitled cause was filed and entered on the 26th day of December, A. D. 1889, dismissing the bill of complaint filed therein with costs.

Yours, etc.,

WM. WEBSTER,
Register in Chancery.

To Lawrence F. Bedford, solicitor for complainant.
To J. H. Goff, solicitor for defendant.
Dated December 27th, 1889.

21 STATE OF MICHIGAN, *County of Chippewa,* } *ss:*

Raymond Empson, of the city of Sault Ste. Marie, being duly sworn, deposes and says that on the 27th day of December, A. D. 1889, he served a notice in writing whereof the annexed is a duplicate original, upon Lawrence F. Bedford, Esq., solicitor for complainant in the cause therein mentioned and upon John H. Goff, solicitor for defendant in said cause by delivering the same to them and each of them personally at the city of Sault Ste. Marie, Michigan.

Sworn to and subscribed to before me, Raymund Empson, this 28th day of December, A. D. 1889.

JAMES T. MOORE,
Notary Public, Chippewa County, Michigan.

STATE OF MICHIGAN:

The Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

And now comes the said complainant and hereby claims the benefit of an appeal to the Supreme Court from the decree rendered in said cause by said court upon the 18th day of October, A. D. 1889.

Dated Feb. 7th, 1890.

LAWRENCE F. BEDFORD,
Solicitor for Complainant.
BRENNAN & DONNELLY,
Of Counsel.

To Wm. Webster, register of said court.

22 *Testimony*

in the case of Wm. P. Spalding *vs.* William Chandler, taken at the adjourned February term of the circuit court for the county of Chippewa, 1889.

In the Circuit Court for the County of Chippewa. In Chancery.

WILLIAM P. SPALDING }
vs.
WILLIAM CHANDLER. }

Mr. DONNELY: I would say that there are some clerical errors in the copying here, which we will ask your honor the liberty to correct.

COURT: In the bill?

Mr. D.: Yes, sir.

The corrections are allowed.

Mr. DONNELY: I have here a number of exhibits, the first being a letter from General Brady, with reference to the Wescott map, to the adjutant general, dated Dec. 11th, 1846, to General Jones, adjutant general. Then a letter of Dec. 24th, 1846, from General Jones to the Secretary of War, William L. Marcy, with endorsements.

Then a letter from the surveyor general's office in Detroit, dated June 9th, 1847, to the Commissioner of the General Land Office at Washington, Richard M. Young, attached to which is a plat of township 47 north, of range 1 east, with a certificate of the surveyor general attached.

Next, a letter dated August 14th, 1847, from Col. Abert to the Hon. Wm. L. Marcy accompanied by a map or plat of part of *part of* township 47 north, range 1 east.

Gen. Land Office Oct. 2nd, 1846, date of plat. It is the map referred to in Col. Abert's letter just mentioned.

23 Next a letter dated Aug. 25th, 1847, from J. Y. Mason, acting Sec. of War, to the Hon. R. M. Young, Commissioner of the Land Office, referring to Col. Abert's letter and plat.

Next a letter dated Aug. 27th, 1847, from the Hon. Richard M. Young, Commissioner of the Land Office, to the Hon. R. J. Walker, Sec. of the Treasury.

Next a letter dated Aug. 30th, 1847, from R. J. Walker, Sec. of the Treasury, to the President of the United States, with endorsements.

Next a communication from the register of the land office at Sault Ste. Marie, March 17th, 1852, to the Hon. J. Butterfield, Commissioner of the Land Office, signed by Andrew Backus, register, with endorsements.

Next a letter of April 29th, 1852, from the Commissioner of the Land Office, J. Butterfield, to the Hon. A. H. H. Stewart, referring to the requirements of the act of 1850, to have the military reserve

and Indian reservation and other reservations designated upon the map of the Land Office, with endorsements.

Next a letter dated Oct. 21st, 1852, to the register and receiver of the land office at Sault Ste. Marie, from John Wilson, Commissioner of the Land Office.

Next a letter dated Washington, Dec. 9th, 1852, from A. H. H. Stewart, Sec. of the Interior, to the Commissioner of the General Land Office, referring to certain lists and descriptions, which are also offered in evidence of public lands to be permanently retained for public purposes, and continuing the order endorsed thereon of President Millard Fillmore in regard thereto, which is as follows: That all the lands described in the above list, and designated by the green shades on the annexed maps, be reserved for light-house purposes, and all the remaining lands situated in the tracts which were temporarily reserved for public uses in the year 1847
24 except the military reserve at Fort Brady be, and the same are hereby released from reserve, with endorsements.

Next a letter from the land office at Sault Ste. Marie, dated Dec. 24th, 1852, from the register and receiver, J. V. Brown, receiver, to the Hon. John Willson, with endorsements.

Next a letter dated Washington, February 10th, 1853, from Col. Abert to the Hon. C. M. Conrad, Sec. of War, with reference to the Fort Brady reservation.

Next a letter dated Washington, Feb. 14th, 1853, with reference to the same matter, from the Hon. C. M. Conrad, Sec. of War, to the Hon. A. H. H. Stewart, Sec. of the Interior, with endorsements.

Next a letter from the Commissioner of the General Land Office at Washington to the register and receiver of the land office at Sault Ste. Marie, dated Feb. 15th, 1853.

Next a letter from the General Land Office, dated Feb. 26th, 1853, from the Hon. John Wilson, Commissioner, to the register and receiver at Sault Ste. Marie.

Next a letter dated the 9th of June, 1853, from the Commissioner of the General Land Office to the register and receiver of the land office at Sault Ste. Marie, with reference to the entry of lands within the reservation.

The next is a letter dated Feb. 8th, 1860, from Joseph S. Wilson, acting Commissioner of the General Land Office, to the register and receiver of the land office, which at that time had been moved to Marquette, acknowledging the receipt of the letter of the register and receiver of the 5th of December, enclosing the papers in pre-emption case No. 2592 of Byron B. Adsit. This is the same date as the receiver's certificate and calling upon them for a report as to why they prevented Mr. Adsit from making the pre-emption purchase. The letter also states or intimates that the property is within the military reserve.

25 The next is a reply from the register and receiver under date of March 8th, 1860; that is, it sets forth the reasons for the action of the register and receiver.

The next is a letter from the Commissioner of the General Land

Office to the register and receiver of the land office at Marquette, dated April 9th, 1860.

That terminates the history so far as the efforts of Mr. Adsit were concerned, to obtain the patent. And in 1881 Mr. Chandler commences his proceedings to obtain title under Porterfield scrip, and I offer in evidence a letter from Mr. Kirkwood, Secretary of the Interior, to the Commissioner of the General Land Office, acknowledging the receipt of a communication with reference to the report, etc. The letter is dated June 28th, 1881. That order came up for consideration in the contest between Secretary of War and Mr. Chandler, and it was found that it had not been made in time, that Mr. Chandler had entered before the order was issued.

Then a letter from the Commissioner, or rather, it is the decision of the Commissioner of the General Land Office, Mr. McFarlane, dated Washington, October 13, 1881, directed to the register and receiver at Marquette, Michigan. It contains five pages of manuscript, and is the decision of the Commissioner of the Land Office, giving a history of the matter, and awarding the tract to Mr. Chandler. However, the question of Mr. Spalding's prior right did not arise, it simply disposed of the claim made by the village.

Then there is a letter from U. S. engineer's office, dated Detroit, January 3, 1882, from General Weitzel, major of engineers, to Brig. Gen. H. G. Wright, chief of engineers, containing a number of endorsements.

Then a letter from the office of the chief of engineers of the U. S. Army, General Wright, dated February 12th, 1883, to the
26 Secretary of War, referring to the piece of land on which Mr. Chandler has located the Porterfield script.

All of this correspondence between the War Department and the subordinate officers shows clearly that the Government did not then claim the land was a military reserve, because subsequently an order was made attempting to reserve it for military purposes.

The next is the decision of the Secretary of the Interior dated June 8th, 1883; it is directed to the Commissioner of the General Land Office, and it is the history of the land, and is the decision of Mr. Teller, who was then Secretary of the Interior, upon the claim of Mr. Chandler, in which he allows Mr. Chandler's claim to the land.

I offer in connection therewith the map—the one which was used upon the hearing, as I am informed, of the Chandler claim. It shows the military reserve and the Indian reserve. On the map appears the military, also the lands and the limits of the Indian reserve, also the tract which was not included in Mr. Chandler's location, but which is included in the certificate held by Mr. Spalding.

Part of the land is still held by the Government, in fact the largest portion of it is still in the Government, reserved by an executive order in 1882. Marked Complainant's Exhibit E.

COURT: Is all the land claimed by Adsit in the Chandler patent?

No, sir.

I would also now offer in evidence the map of the village of Sault Ste. Marie, as surveyed and laid out, showing its limits under the act of 1850, containing a notation and certificate.

It shows the exact limits of the military reserve as finally located under the act of 1850.

It is the one referred to in the correspondence which I read, in which the Commissioner of the Land Office said that the only
27 plat on file of record was in Westcott's survey, and he sent a copy, as the correspondence will show, to the register and receiver, and directed the entry of that plat upon the map, as being the proper limit of the military reserve. Ex. "C."

Now I offer in evidence the receiver's certificate, this is the duplicate of the original which is held by Mr. Spalding, marked Compt. Ex. "A." I offer in evidence a certified transcript from the Land Office at Washington, marked Compt. Ex. "G," and also a certified transcript of Mr. Spaulding's protest, marked Compt. Ex. "F."

Mr. GOFF: We object to the introduction of Complainant's Ex. "A" in evidence, and also to all other papers and copies which have been offered in evidence by complainant's solicitor, for the reason that it does not appear in the papers that the land was a legal subdivision, which it was claimed was pre-empted. The statute requiring that it shall be taken by legal subdivision; further it appears by the paper-writings in evidence that the land sought to be pre-empted was an Indian reservation, and under the pre-emption law an Indian reservation was not subject to pre-emption.

There is no declaratory statement offered in evidence in this case, and the other papers offered are immaterial and irrelevant on that ground.

The certified copies of the documents from the Land Office at Washington are marked Ex. "B."

Mr. GOFF: We object further that the paper purporting to be the receiver's receipt not being certified by the Commissioner of the General Land Office, or of the land officers at Marquette, is not admissable in evidence.

Complainant now offers in evidence deed to the complainant from Byron B. Adsit. It is marked Compt. Ex. "D."

The certified copy of the map of the village of Sault Ste. Marie of 1853 is marked Compt. Ex. "C."

28 Defense objects to the introduction in evidence of the deed from Byron B. Adsit to William P. Spalding as incompetent, irrelevant, immaterial and inadmissable in evidence. Complainants offer in evidence the record of a patent to Mr. Chandler found in Liber 9 of Deeds on pages 417 and 418 in the office of the register of deeds for Chippewa county.

Complainant's Exhibit "I." It is conceded that they are records of Chippewa county.

29 II.

Direct examination:

Capt. WM. P. SPALDING sworn for complainant.

You are the complainant in this case, Mr. Spalding?
I am.
Will you look at this paper—have you ever seen it before?
I have.

The paper referred to is Ex. D.

Is that your writing?
It is.
Who executed it?
Byron B. Adsit.
Did you see him execute it?
I did.
Where was it executed?
In my store.
Here in the Soo?
In the village of Sault Ste. Marie.
Was it executed on the date it bears?
It was.
How long have you had this deed in your possession—ever since then?
Ever since it was executed.

The paper is handed to the court by Mr. Donnely, who says: The form of the acknowledgement is rather peculiar, and that seems to be the objection.

Mr. GOFF: We renew our objection to the introduction, or to any evidence that there is any acknowledgement, and that it is incompetent, irrelevant and immaterial.

Mr. DONNELY: I suppose the deed would operate as a conveyance without an acknowledgement.

30 Witness is shown Ex. A and asked—

Have you ever seen that paper before?
Yes, sir; I had it at the time the deed was made out and given to me.
Who gave it to you?
Byron B. Adsit.
Have you had it in your possession, or in the possession of somebody else for you, ever since then?
I have.
Do you know Mr. Warner's writing, his signature?
Yes, very well.
Whose signature is that attached?
Ebenezer Warner's.
Do you remember when he was receiver of the land office?
I do.

Mr. GOFF: I object to the proof of an official title by an individual in this way.

Was he at the time, 1859, acting as receiver of the land office?

Objected to as not a proper way of proving the official position of an alleged officer.

For how many years did Mr. Warner act as receiver?
I cannot say just how many years—three or four years.

Mr. DONNELY: I think he went out of office at the time Abraham Lincoln went in.

Did you know Byron B. Adsit in his lifetime?
I did.
When did you first know him?
I knew him in 1840; I think he was here in 1847 or '48.
Did he go from here into the army?
He did.
Lived here after he left the army?
Some years, yes sir.

31 What did you know, if anything, Mr. Spalding, about his settling on this land up here above the canal?

I know he built a house there, and fenced in a lot, and lived there.
Do you remember whether or not he lived there in 1859?
I think he did up to the time of his proving up, he made that his home there.
What did he have there, what sort of buildings?

Objection is made to this proof as incompetent, irrelevant and immaterial, all of it.

He had a building and house built of lumber, a frame house. I cannot give a description of it exactly, only I know he had a good comfortable house there.
How many years did he live there?
He was there—I don't know as I could tell exactly, but I should think about three years.
He was there about three years?
I think he was.
So that he went on there along in 1857?
1856 or '57, '56 I guess it was as near as I can recollect.
What part of 1856?
In the summer of 1856.
In the summer of 1856, he went on there?
Yes, sir.
Did he have any portion of the land inclosed?
He did.
How?
By fence.
Board-and-rail fence?
Board and rails I think it was.

Did he cultivate any portion of it?

I know he had a garden.

32 He had a garden?

Yes, sir.

What became of Adsit?

He went into the army in 1861. I got him a commission in company K, captain's commission, captain of company K, first Michigan.

Did he ever come back to the Soo?

He did come back.

How long after?

Two years after that. He came out from the army in 1864, and he came to me and I got him a position. I was living at Marquette, and I got him a position on the railroad at that time.

That was in 1864?

Yes, I came out in April 1864.

Well, what was the character of Mr. Adsit's occupation up there, as to being public and open, did he make it his home?

Yes, sir.

Was he a married man?

He was not married until afterwards.

When did he get married?

Just before he went into the war—into the army.

Here at the Soo?

Yes, sir.

This was after he had sold to you?

Yes, sir.

Now, with reference to the deed, Mr. Spalding, what consideration did you pay Mr. Adsit for the property?

I do not recollect what the amount was; I know it was quite a little amount.

The deed says it was one dollar?

That was a mere nominal sum, supposed to be enough to be put in the deed; it did not express the amount I paid him.

33 Tell the court as near as you can recollect the amount you paid him.

I paid him at least $100, and I don't know how much more. I know when he went into the army I helped him buy his outfit besides.

In addition to the $100 you helped him to buy his outfit?

Yes, sir.

What do you mean by that?

His sword and sash and uniform.

Mr. GOFF: That was long after the deed?

Yes, sir.

Defense objects to it as incompetent and irrelevant as to any help that he extended to him after the deed.

How long did that building remain up there after that and the fences?

That building was there in 1861.

It was there in 1861?
Yes sir.
Occupied?
I don't think it was occupied at that time.
Now, when did you first come to the Soo?
In 1846.
Do you remember Lieut. Westcott?
I recollect him very well, and know when he made this survey in 1847.
Do you remember when the platting was being done here under the act of 1850?
Yes sir.
You were familiar with that I presume?
Yes, I was quite familiar with it at the time.
The first canal, that is now the old canal, had been cut through when Mr. Adsit made this pre-emption?
Yes sir.
34 Dou you remember the fact of Mr. Adsit going to Marquette to prove up?

Objected to as incompetent.

I do.
Do you know who his witnesses were?
I do not recollect, no sir. It was so long ago I have forgotten.
Now, in 1881, Mr. Spalding, state whether you made any protest against the action of Mr. Chandler.
I, learning that Mr. Chandler had located some scrip on a portion of this property that I claimed, made a protest and sent it to the Land Office at Washington.
At Washington?
I guess so, yes. I registered my letter and got a receipt for it, and afterwards heard from them that it was recorded.
Got a reply acknowledged in receipt?
Yes sir.

Mr. DONNELY: That is the paper that I will send to your honor.

Is this piece that Mr. Chandler claims, is that occupied at present by anybody?
There is a building upon it now since Mr. Chandler took possession of it.

Cross-examination:

You have lived in the village of Sault Ste. Marie since 1846, with some exceptions when you were away for a short time?
Yes, except when away for a few years.
Now, from 1846 did you live here until 1861 or '60?
Until 1862 when I went into the army.
And you were familiar with this tract called the Indian reserve?
I was.

35 When you came here in 1846, were there Indians over there then?

There was an Indian encampment.

Now, from 1846 down to 1885 is it not a fact that there were Indian houses over there on the Indian reserve, houses of Indians?

Yes sir.

Framed houses, were they not?

Log houses, I believe.

Well, there were some frame houses?

I don't recollect.

Those houses had been there ever since you can recollect, and before too—long beyond your memory?

No sir; they were built since I came here. They lived in wigwams up to that time.

Up to the time you came here they lived in wigwams, but shortly after they built houses?

There might have been one or two houses.

Do you recollect by whom they were inhabited?

By Indians.

Do you recollect the names of any of them?

Chief Shawano lived in one of them on the island. I guess the one on the island was the first one built.

There were others on the mainland were there not?

Yes, afterwards.

How soon afterwards?

I cannot tell.

There were houses there in 1850, were there not, on the Indian reserve?

There possibly might have been.

Well, don't you recollect of any in '52 and '53?

I recollect there were houses on the mainland or on the island, I don't know which.

36 Was there more than one house on the island?

I think there was.

When, in 1846?

I don't think there were any houses there in 1846.

What year do you recollect the chief's house being built?

It must have been after '50.

How soon after '50?

Pretty soon after, at the time of the settlement of claims, I think there were one or two houses there.

Well along in 1854 and '55 the Indians had quite a number of houses there.

I presume they had.

Between 1850 and '58 there were at least half a dozen houses occupied by Indians on the Indian reserve?

I should judge so.

North of the canal reserve?

Yes sir.

What did the Indians do over there?

Fished in the rapids.

Carried on fishing—and what did they do with their fish?
Sold them to the village and boats.
Boats passing through the canal?
Yes sir.
Did the Indians raise anything over there?
Never to my knowledge.
Never knew the Indians to raise anything on the Indian reserve?
No, sir.
Did you know of any crops being raised on the reserve?
I knew Adsit had a garden.
But as a crop?
Not as a crop, any more than vegetables, potatoes in particular.

37 What else did the Indians do that were living on the reserve in 1854, '5, '6, '7, '8 besides to fish and sell their fish there?
I don't know of there ever doing anything.
At that time were they engaged in carrying people over the rapids?
It is very likely they did do that.
Ever since the canal has been here it has always been done by the Indians?
Yes sir.
They were located right there where it was handy to do that?
Yes sir.
They kept their boats over there, did they not?
Their canoes, yes, sir.
That was long before Adsit's pre-emption that the Indians were there?
Yes sir.
And had little storehouses there, had they too?
Not that I know of.
What else did they have besides their houses?
Nothing that I know of.
You used to know the Chippewa Portage Company?
I did.
About what time was that organized—somewhere along in 1855?
It was organized in 1850.
It was before the canal was built?
Oh, yes.
What time was the canal finished, Captain?
I think in 1855 or '56.
The canal was built right through this Indian reserve, was it not?

38 Yes, a portion of it until they got the old mill race and the Portage railroad, when it took a cut through the old race about half way.
The mill race was the boundary of the Indian reserve?
Yes, the mill was built in 1820 or '22.
The Portage railway at the time of the survey was part of the line?

The Portage ran up along the race from what is now the office of the canal to the head.

Then the bank of the mill race made a street?

They leveled it down and the street was along that bank.

And when Whelpley made his survey in 1854 and 1855 that bank of the canal was taken as far as it went for Portage street?

Yes; while the Portage road ran to the head, and when the canal was built and cut the Portage road, it was turned or cut off then. We had a plank road made at the time on the Portage road.

Now, there were two companies, one a corporation, the Chippewa Portage Company; and the other was Childs and Spalding?

No, Spalding and Bacon.

What was the difference in the methods between Spalding and Bacon and the Chippewa Portage Company in carrying things across?

The Chippewa Portage Company had a horse railroad and we had a plank road and used teams.

Where was the line of the Chippewa Portage Company's road?

It went in on Water street and went straight up through until it struck the Portage road, and went on to the head.

It commenced about what part—at the old military wharf?

At the present wharf of the Government, that was Mc-
39 Knight's wharf, the superintendent or head and front of the Portage railroad.

It is the wharf in front of Fort Brady?

Yes, he got a permit from the United States Government to build it there, and it became Government property afterwards.

Then commencing from that Government wharf it ran west along Water street did it not?

It ran west right through the center or near the center of Water street.

And then its course would be a little bit south there in going along Water street?

Not much, it went pretty nearly straight west; it might have turned to the south a little.

But the road which was used by the Chippewa Portage Company, it ran west from Water street until it struck what point?

Well, they would strike Portage road pretty near where the Iroquois house is now.

And then.

Then they followed up on the line of Portage road right to the head.

How was the Portage road, or the road used by the Chippewa Portage Company as compared with the line of the present canal?

It crossed the canal, it cut both that and our plank road.

The canal cut the road as shown on the map of the Whelpley survey?

I don't recollect how the map was.

Well, you have got it right there, give us the line of that road.

That was Barbeau's—Water street extended only to about here.

Water street then extended west as far as River street?

Yes, and then turned up River street around Barbeau's
40 house; then he got the right of way through here; it would come up on Portage street about where the Iroquois is now; then it followed up the line of the old raceway that was built in 1820 or '22, followed up there and also the street. I know for a long distance our plank road was on the south side of his railroad, then it cut across our plank road and cut off. Our plank road kept on the south side of the race until near the head before it turned to our pier.

Your pier was what claim?

We never made any claim to it.

What was it called, it is proved up there now?

It is Newcomb's and Peck's.

It is claim 3 up here near the head of the canal?

Yes sir.

It would be the northerly one of those docks; which dock was it, indicate it by direction?

The northeasterly dock on the large map.

In here between the two docks was the American Fur Company's dock?

Yes sir.

Sheldon McKnight had an interest up here?

Yes, that is his dock.

He had claim '95?

I don't know that is his dock there.

It was the claim that is farthest west?

Yes sir.

Now, what did Sheldon McKnight have up here?

A warehouse and pier for boats to land.

That was before the building of the canal of course?

Yes, everything was transported across the Portage.

Then the object of the Portage Company was for transferring goods and passengers and freight across this portage at the Falls of St. Mary, was it not?

41 Yes, sir.

And the tract they used was for some distance on the line of the St. Mary's Falls ship canal?

Oh, no.

Did it not run across here?

Yes, but it was not on the line of the canal.

Well, before the canal was built the line of the road used to run diagonally across the line of the canal?

Yes, sir.

Now the Portage road ran through the road used by the Chippewa Portage Company and through a part of the Indian reserve, did it not?

We did not call this the Indian reserve down here, because this part up here was put in claims. The Indian reserve commenced here.

Is that not the Canal park?

Oh, well right up here is where it came in.

Well now, answer my question; the road which was used by the Chippewa Portage Company ran across the corner of that part of the Indian reserve which lies south of the ship canal?

Yes, just a small corner.

That part of the Indian reserve which lies south of the ship canal is now called the Canal park?

I presume it is from the location.

And is used by the Government as a canal park?

Yes, or office or something.

There office is on the corner of that part of the Indian reserve which lies south of the ship canal?

Yes sir.

The large map offered in evidence is marked Complainant's Ex. B.

Can you designate on here this Ex. E, the part of the In-
42 dian reserve which is occupied by Indians, upon which they had houses built previous to the building of the canal?

Well I should say they were encamped right along here.

Describe the place?

It is right south of Island No. 5, well, southeast of Island No. 5, that is where the canoes were brought up onto the shore.

Is it not a fact that on the Indian reserve opposite Island No. 5 there were also houses?

There was a number of camps.

Well, houses?

Well, not until perhaps fifty something.

Well in '55 and '56 there were houses on the reserve directly opposite to Island No. 5?

Yes sir.

Those houses remained there opposite to Island No. 5 until four or five years ago, did they not, Captain?

Yes, until removed by the canal officials.

Do you recollect about what time that was, whether it was three or four years ago?

I do not recollect exactly, three or four years since.

The canal official then removed the Indians from that point, with the exception of the Indians located on the island of Chief Shawano?

I think so.

Speaking now of the head of the Portage—who had storehouses at the head of the Portage?

McKnight.

Sheldon McKnight?

Yes, Sheldon McKnight, the American Fur Company and myself.

Spalding and Bacon?

Spalding and Bacon.

What were those storehouses used for?

43 For storing goods for shipment.

Where to?

Above.

On Lake Superior?

Principally above, and whatever came down from above, until it was drawn across the Portage to ship below.

Well, did you used to keep a clerk there before the building of the canal?

We kept a warehouseman there.

Did you sell stuff up there?

No sir; simply to receive.

They were received and from there transported, what you wanted to use in your store to your store, and what was wanted to be sent along was sent along?

Yes sir.

Did you have goods that were conveyed both ways, up and down?

Yes, we used to ship up about a hundred thousand barrels a year.

Of what?

Supplies to the mines.

You say that the Chippewa Portage Company had a railway at that time?

Yes, a horse road.

A horse railway, and how long had they used that previous to November of 1859?

They abandoned the use of it as soon as the canal was opened. It was cut out by the canal, and there was no further use for it.

That would be in 1854?

In 1856.

Then it was discontinued in 1856?

That is my recollection of it.

Now, your road—the road that was used by Spalding and

44 Bacon for a Portage road—was that part of the way on the Indian reservation?

No sir; not at all, it was on Portage street or Portage road. It was built on the south side of the old raceway to the head of the Portage.

You mean to say that it was not on the Indian reservation at any of the way running up?

Not at all.

Where was the common carrying place?

On the Portage road.

Now, by the Portage road, which road do you mean?

My plank road was laid on the Portage road.

And the Portage road is what is described on Whelpley's map as Portage street?

Part of the way.

Well, after Portage street crossed where the canal is, that was Portage road?

It was Portage road previous to the opening of the canal, during the building of the canal we had a bridge across the excavation.

For your road too?

Yes sir.

Well, where your road crossed the canal was the Indian reserve was it not?

No sir.

What was it?

It was outside of the Indian reserve, south of the reserve in the canal reservation?

Well, of course the canal reserve—it crossed the canal reserve or the reserve crossed the road.

When the canal was built it cut across your road?

Yes, and cut across outside of the Indian reserve because it was on the south side of the old raceway where it cut across.

45 After the canal was built in 1856 what was that canal used for? I mean now, the canal which was cut through the Indian reservation so called.

For transporting vessels.

And has been used right along from the building of the canal for that purpose up to within four or five or six years?

Yes, up to the present time the canal has been used.

And the old locks in the canal have been used up to within two or three or four years?

Yes sir.

What is that ground up there—what kind of ground is it?

Some of it is pretty good agricultural ground.

Well, speaking now of where the Indians were located? The lower part of it.

Yes sir.

It was rocky and was not used for agricultural purposes at all, simply for fishing and teepes or houses built on it for living.

Regular houses there?

Used for camping purposes, the lower part.

Well, they lived there, did they not?

Yes, of course they lived there.

Well, at that time the Indians were not enjoying tribal relations?

Yes sir.

They had voted here?

Some of them had voted.

Had not most of them ever since you can recollect?

I believe they belonged to the tribe however.

Have not most of them voted?

The most of them have voted.

The most of them have voted for the last thirty years, have they not?

Yes sir.

46 Do you know of any Indian living on that reservation that was not a citizen?

I cannot say that I do.

At the present time, on the tract of land in question in this suit, what is there on that tract of land?

At the present time?
Yes sir.
What part of it?
On the tract of land in question in this suit.
There is a stone building there.
What is that?
It is occupied I am told for an electric light plant.
It is an electric light plant?
So I am told but I never was in it.
Called the power-house?
I suppose so.
What else, has there been any excavation?
Yes, a canal for the power to run it.
A canal commencing somewhat up to the west of the power-house?
Yes sir, at the head.
Have you been living in the city here since 1880?
Yes, I have lived here since 1880.
Did you know of the building of the canal there—the electric light canal?
I knew there was something of the kind going on from hearsay, I did not go to see it.
You did not go to see it, but did you see it?
I have seen it since it was built.
You knew it was being built there?
Yes sir.
There is a good deal of rock through which that is being run?
Yes sir, some.
47 And where the St. Mary's Falls ship canal is, there is a good deal in the soil there?
Yes, three or four feet under the surface.
Three or four feet under the surface, all along up there you come to the rock, don't you?
Yes sir.
At the time you sent your protest to the Commissioner of the Land Office you say you got a receipt?
Yes sir.
Have you got the receipt with you?
I have not got it with me.
Is it in town?
I think so. I think I have it at the house.
What time was it you sent the protest?
When I learned that Mr. Chandler had a case coming up before the Commissioner or Secretary of the Interior.
You then filed this paper with the Secretary did you?
It was either the Secretary or the Commissioner of the Land Office, I have forgotten which now.
Your receipt would show would it not, which one received it?
I presume it would.
It would show which office?
No answer.

We would like to have that produced for the purpose of fixing dates if you will produce it.

I think Mr. Donnely has a copy of it.

I mean the receipt.

Mr. DONNELY: I have not the receipt.

WITNESS: Well, if it is not mislaid or lost I have it yet.

What was your purpose in sending this paper to the Land Office?

I claimed the property.

48 And you received an acknowledgement from him that your paper was received?

Yes sir.

Now, after your paper was filed with the officer to whom it was sent there was a decision made in the case?

Yes, so I understood.

Did you ever make any appeal from that decision?

No, for the reason I was not able to do it at that time.

It was for lack of means?

It was for lack of means.

You had not got the ancient diggings in good shape then?

No sir.

That was the reason and the only reason?

That was the only reason I had.

Simply the fact that you did not have the means to do it?

That was the cause.

Were you aware that it would cost more than you could afford at that time?

That was what I supposed.

You took legal advice, did you not?

Yes sir.

And were informed somewhat about the expense?

No, only it would cost more than I could——

More than you could stand?

More than I could stand.

Did you prepare the paper, or was it prepared by an attorney—that paper you forwarded to Washington?

It was prepared by an attorney.

Did you know, at the time that you forwarded the paper, that the village was also making a contest for the tract of land?

I did not know it until afterwards.

Did you know that anybody was contesting the matter with Chandler?

49 I did not, except myself.

Then, so far as you knew about there being any contest, it was between you and Mr. Chandler at that time?

That was all I knew of.

Did you make any further communication with the Land Office Department of the Interior Department after you forwarded your claim and protest?

Except to send a party there to look after it.

Whom did you send?

I did not send anybody there; I applied through our Senator of the State, Senator Conger.

You had Senator Conger to look after it at the time?

I did.

He was a lawyer too, was he not?

I think he was before he went into Congress.

And he looked after the matter for you at that time?

Yes sir.

At the time of this contest with Mr. Chandler?

Yes; I sent him the Land Office receipt, copy of the deed, and told him to look after the matter. I asked him to look after my protest.

Did he comply with your wishes?

He went to the Land Office and replied to me.

Told you the statue of the case?

Not very much, very unsatisfactory.

Did you employ any one else or ask any one else after that?

I did not.

Who prepared your paper to send to Washington?

Mr. Sutton.

E. S. B. Sutton?

Yes sir.

Judge Sutton?

Yes sir.

50 He was then of the village?

Yes sir.

Was he the lawyer with whom you consulted relative to taking an appeal?

He was not.

Who was the lawyer you consulted relative to taking the appeal from the decision of the Secretary of the Interior?

I have consulted with a good many.

Was it so many that you do not recollect?

Mr. Donnely is one of the men that I consulted with.

That was relative to taking the appeal from the decision of the Secretary of the Interior?

I don't know what you call it, but it was to look after my claim.

It was to look after your claim at the time Chandler was making his application for this land?

No, it was after it had been decided in favor of Mr. Chandler.

After it was decided you had somebody to look after it?

Mr. Donnely is the one.

Do you recollect any other lawyer you had looking after it after the decision in favor of Chandler?

He is the only one.

Mr. Sutton, Mr. Donnelly and Senator Conger are the only three lawyers you had looking after it for you?

I did not have him as a lawyer.

I wish to read you a description and then ask you whether or not the Indian reservation is included within that description: Commencing at the northeast corner of the military reserve held by the

United States at a point where it touches the St. Mary's river, thence south one mile——

I don't understand about the military reserve.

Don't you know where the military reserve is?

Yes, it is here, down here.

51 Yes, commencing at the northeast corner of that——

Well, go on.

At a point where it touches the St. Mary's river; thence south one mile, thence due west two miles, thence due north one mile to the River St. Mary; thence east following the meanderings of the same to the place of beginning. That would include the Indian reservation, would it not?

I don't know where the military reserve is, except here.

That is the only one I am asking you about.

I don't know anything about that description.

You know where the military reserve is here?

Yes.

Know where the northeast corner of it is?

Yes, sir.

Supposing you started there and run south one mile—you understand that?

Yes, sir.

And then run west two miles, and then north to the River St. Mary, and then down the St. Mary to the place of beginning?

That would include the Indian reserve.

That would exactly include that?

Yes, sir.

You can easily enough see now?

Yes, sir.

Did you ever make any application to recover back the money from the Government that was advanced by Adsit?

Yes, sir.

Do you know whether he ever did or not?

I know that he never did.

How do you know that?

Because I was familiar with all his business.

When did he commence to work for you?

I don't recollect the year, fifty something.

52 Was it before or after the canal was finished?

It was during the building of the canal, I think.

He used to attend your warehouse at the head of the Portage?

No, sir.

Where was he?

In my store.

Where was your store at that time?

At this time it was nearly opposite the Chippewa house.

On Water street?

On Water street right in front of the old warehouse.

How long did he work for you?

Well, off and on for three or four years, five years I guess.

Was he working for you in 1859?

Yes, he was, because he was with me when he went into the army.

And had been working for you for the time previous to the completion of the canal?

Not constantly, but part of the time.

What was he doing for you?

I said he was a clerk in the store.

What kind of a store were you keeping at that time?

A general variety of goods.

Dry goods, groceries—a general store?

Yes, general store.

Where did Adsit remove from at the time he went onto this Indian reserve?

From my employment.

He removed from your employment?

Yes, sir.

Now, did you used to know William F. Clitz?

I did.

Did you know Charles C. Childs?

53 Yes, sir.

Where was Mr. Byron B. Adsit living previous to the time that he commenced to live upon this Indian reservation?

He was living with me.

In your house?

Boarding with me.

Where was his sleeping place?

In the store.

Slept in the store?

Yes, sir.

And boarded with you?

Yes, sir.

Now, when he went down onto the Indian reservation where did he board?

I do not know; don't recollect.

Do you know of your own knowledge, so that you can swear positively, as to the time that he went onto the land there?

I could not designate the time; it is a good many years back and I don't recollect much.

Do you know whether it was in 1859.

It was previous to 1859.

Do you know where the boundaries are here in town of the Government survey—know where section 6 is?

Yes, sir.

Where is the east line of section 6, with reference to the military reserve?

I don't know the east line; don't know how far it extended to the east.

Where is the west line?

The west line is the meridian—comes out at the head of the Portage.

Now, how far east of that would be the east line of the section?

54 It would be a mile I suppose.

Now, in what part of section 6 would Water street be?

Probably in the northwest quarter.

The northeast fractional quarter, would it not be, Captain?

I guess it would.

It would be in the northeast fractional quarter of section 6, town. forty-seven north, of range one east?

Yes, sir.

And that was the north side of Water street, where you were situated?

Yes, sir.

What time did you commence keeping store on Water street?

I guess it was in fifty-three or four.

Well, somewhere along there?

Yes, sir.

How long did you keep store there?

Until I went into the army in '62.

Who else was keeping store there on Water street at that time?

Kept other stores?

Yes.

Barbeau.

Where was he located?

Where Church was located previous to moving last.

That was on the corner of River and Water street-?

Yes, on the north side.

Who else was keeping store here?

J. E. Cady.

Where Prenzlauer's store is now?

Yes, sir.

That was on the north side of Water street?

Yes, sir.

And between you and Barbeau?

55 Yes, sir.

Commenced keeping store as early as you or before?

Barbeau was there before me.

Barbeau was there before you?

Yes, sir.

Who was keeping farther west of Barbeau?

Pendall, I believe, kept on the other corner.

That would be the corner of Water and——

Would be the corner of Water and River now.

Then on the south side of Water street, who was keeping store?

O. S. Lyon.

What time did he commence to keep store there?

In '47 I think.

Kept right along up until '60?

I think he did.

All of you did, did you not?

I think so.

And who else besides Lyon?
I don't recollect now what other stores there were.
Did Sanders keep any store?
Not to my knowledge.
What was George Sanders' business?
If he was here it was long before that. Do you mean this Confederate Sanders?
I don't know the man from Adam.
He was previous to '46.
Alva Jones—what was he?
He had a jewelry store on Water street.
Where was the American Fur Company's place of business?
On the south side of Water street where Carleton now lives.
That was next adjoining the Fort Brady grounds?
Yes, the Agnew house was between the American Fur
56 Company and the fort; there was a large common between the pickets.
Now, the American Fur Company, where did you say their place of business was?
Where Carleton now lives.
Then they had another place of business at the head of the Portage?
No, they had a shipping-house there, or storehouse.
And who else besides Spalding and Bacon, the American Fur Company and the Chippewa Portage Company had storehouses up there that you recollect of?
Those are the only three storehouses there was.
What else was there up at the head of the Portage?
Frank Newcomb had a saloon and billiard-room up there.
Well, in 1858 and 1859 the persons whom you mentioned as keeping store were in business here on Water street at that time?
Yes, I think they were.
Who occupied the Cable claim at that time?
There were a good many on it.
Well, say in '58 and '59 was Jacob Reilly here then?
Yes, but not on the Cable claim.
What claim?
Cannot tell you, he lived in the Club house.
On Water street?
Yes, sir.
That was in 1859 and '60?
Yes, sir.
Who else?
James L. Hopkins.
What did Hopkins do?
He kept a saloon.
On the north side of Water street?
57 Yes, sir.
Who else?
Stephen B. Wood.

Now, how far east of that would be the east line of the section?

54 It would be a mile I suppose.

Now, in what part of section 6 would Water street be?

Probably in the northwest quarter.

The northeast fractional quarter, would it not be, Captain?

I guess it would.

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What claim?
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Yes, sir.
That was in 1859 and '60?
Yes, sir.
Who else?
James L. Hopkins.
What did Hopkins do?
He kept a saloon.
On the north side of Water street?
57 Yes, sir.
Who else?
Stephen B. Wood.

What did Stephen B. Wood have?
A house.
Lived there?
Yes, sir.
Were you engaged in 1849 in obtaining a charter for the incorporation of the village of Sault Ste. Marie?
I don't recollect—I presume I was.
You led a little then, I suppose?
I had a finger in most everything that was going on.

Redirect examination:

On which side of the canal was the Adsit house?
On the north side just above the basin.
Will you point it out there on the map?
It stood right in there; here is the basin, and his house stood in back there.

Witness designated a point nearly opposite Island No. 2 on the map.

Was it in the tract since patented by Mr. Chandler?
Yes, sir.
Did the railroad company continue to operate the tramway or horse road after the opening of the canal?
No, sir.
That was abandoned?
It was abandoned entirely.
And you say the canal was finished in 1855?
Fifty-five or fifty-six.
Was there anybody or any Indians living above where Adsit had his house?
No, sir.
58 They were all living down below?
They would occasionally camp above.
In these wigwams?
In wigwams, yes, sir.
How old a man was Adsit?
I should judge he was 28 to 30.
When?
At the time he made the pre-emption.
Did he vote?
I think he did.

Recross-examination:

You know where the present engineer's offices of the canal are?
I do not.
Do you know the place that was formerly occupied by the superintendent of the canal as a dwelling-house?
The superintendent of the canal?
Yes, sir.
It was on the banks of the lower lock.

Do you know where Superintendent Wheeler's office is now?
I think it is the old office on the upper lock.
Do you know where Capt. John Spalding used to live?
Yes, sir.
What is that used for now?
It is used for the canal office.
It was changed from the residence of the superintendent into a canal office?
Yes, sir.
Do you know whether Chief Shawano used to have a house in the immediate vicinity of that place?
I do not think he did for the old mill used to be right about where that house is.
59 The old mill?
Yes, it was built in 1820 or '22, the foundation was here when I came.
Then there was a saw-mill located on this Indian reserve?
It was the race that was cut for running the saw-mill.
And it finally bounded the Indian reserve; there was simply a foundation of it when I came up.
Locate that saw-mill with reference to Water street?
It is about where the present canal office is located.
The present canal office—you mean the one south of the new locks?
Yes, sir.
The building they occupy now for an office which was the superintendent's office?
Right on Portage avenue.
Yes, sir.
And on the corner of Portage avenue and Douglas street so called?
Well, I don't know the name of the street, it is the street that runs down to Water street.
And it is the street which is next west of River street, is it not?
Yes, sir.
And it is on the corner of the street running parallel with River street and next west of River street and Portage avenue?
That is it.
And the corner is the northwest corner?
It is the southeast corner of the Indian reserve.
Southeast corner of the Indian reserve?
Yes, sir.
How long has it been on the Indian reserve?
It has been moved over from the canal four or five years.
Was it not over ten years ago?
60 I cannot say.
Was it moved when you were in the army?
I cannot tell when it was moved, whether it was moved or not—I have no recollection about that.

What did Stephen B. Wood have?
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Lived there?
Yes, sir.
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Yes, it was built in 1820 or '22, the foundation was here when I came.
Then there was a saw-mill located on this Indian reserve?
It was the race that was cut for running the saw-mill.
And it finally bounded the Indian reserve; there was simply a foundation of it when I came up.
Locate that saw-mill with reference to Water street?
It is about where the present canal office is located.
The present canal office—you mean the one south of the new locks?
Yes, sir.
The building they occupy now for an office which was the superintendent's office?
Right on Portage avenue.
Yes, sir.
And on the corner of Portage avenue and Douglas street so called?
Well, I don't know the name of the street, it is the street that runs down to Water street.
And it is the street which is next west of River street, is it not?
Yes, sir.
And it is on the corner of the street running parallel with River street and next west of River street and Portage avenue?
That is it.
And the corner is the northwest corner?
It is the southeast corner of the Indian reserve.
Southeast corner of the Indian reserve?
Yes, sir.
How long has it been on the Indian reserve?
It has been moved over from the canal four or five years.
Was it not over ten years ago?
60 I cannot say.
Was it moved when you were in the army?
I cannot tell when it was moved, whether it was moved or not—I have no recollection about that.

Redirect examination:

Who constructed that mill—was it in operation?

No, it was not in operation; it was a Government mill, I was told. There was only a foundation. It had all rotted down when I came here. I always understood it was put up by the Government at the time they were building the fort.

There was no fence or post, or monumental post to indicate the division between the Indian reserve and military reserve?

No, sir; nothing at all.

Defense.

Defense offers in evidence a certified copy of a letter from the General Land Office dated March 31st, 1847, addressed to the Hon. R. J. Walker, Secretary of the Treasury, requesting the reservation of the land at the rapids of the Sault Ste. Marie, and designating among other tracts the north fractional half of fractional township 47 north, of range one east, followed by a letter dated April 3d, 1847, from R. J. Walker, Secretary of the Treasury, to the President of the United States, upon which is indorsed the order of James K. Polk, reserving from sale the lands as requested. That would be the north fractional half.

The papers above offered are marked Def. Ex. I.

Defendants also offer- in evidence certified copy of a letter from the War Department dated August 26, 1847, addressed to the Hon. R. M. Young, Commissioner of the General Land Office, signed by J. Y. Mason, Secretary of War, asking that you will cause to be reserved from sale the sections colored in red embracing sections 4, 5 and 6, etc.

It is marked Def. Ex. 2.

61 Defendants also offered in evidence a certified copy of a letter dated July 19th, 1847, to Lucius Lyon, surveyor general at Detroit, Michigan, from James H. Piper, acting Commissioner of the Land Office.

Defendants also offer- certified copies of papers the certificate bearing date January 18th, 1889, and certified by T. J. Anderson, acting Commissioner of the Land Office.

They are marked Def. Ex. 3.

This Ex. 3 also contains the instructions to the register and receiver at Sault Ste. Marie, dated August 14th, 1851. Ex. 3 also contains the report of the register and receiver on the settlement of claims here at Sault Ste. Marie.

It is dated April 14th, 1853.

In this batch, Def. Ex. 3, is also a letter from the General Land Office dated February 26th, 1853, to the register and receiver at Sault Ste. Marie, Michigan.

It also contains a letter of June 9th, 1883, from John Wilson, Commissioner, to the register and receiver at Sault Ste. Marie.

Defendants also offer- in evidence certified copies of the final proofs and entry papers of Byron B. Adsit; the date of the certificate is January 18th, 1889, that is the date of the land office cer-

tificate. They are copies of the final proof and entry papers of Byron B. Adsit, pre-emption No. 2592, and the decision of this office cancelling the same, which shows that it was cancelled April 9th, 1860.

It is marked Def. Ex. 4.

Defense offers in evidence a certified photolithographic copy of a plat of township forty-seven north, of range one east of the meridian of Michigan.

It is marked Def. Ex. 5.

Defendants offer- in evidence a certified copy of a map of the village of Sault Ste. Marie, Michigan, surveyed in 1854–'5, by authority of the act of Congress approved September 26, 1850,
62 and instructions from the Commissioner of the General Land Office, by Thomas Whelpley. It is offered in connection, of course, with report of the register and receiver.

Marked Defendant's Exhibit 6.

It is admitted that the following exhibit marked Defendant's Exhibit 7 *are* the field-notes of the Government survey of the said Indian reserve:

Indian reservation—var. 1 deg. 20 min. east.

Set post at head of mill race northwest corner of this reserve, thence down said mill race south 77½ deg. east 55.66 to southeast corner of reserve where set post; thence along outlet of race north 37 deg. east 7.00 to Straits of St. Mary where set post at corner of storehouse. From foot of outlet of mill race east end large island bears north 4 deg. west, east end of small island bears north 6 deg. west; thence along straits upstream.

Course.	C. L.
North 24½ deg. west,	6.00 to foot of rapids.
North 70½ deg. west,	5.00.
North 86 deg. west,	5.00.
South 48 deg. west,	6.50.
South 82½ deg. west,	7.00.
North 36 deg. west,	4.50.
North 56 deg. west,	4.00.
South 84 deg. west,	5.50.
North 87 deg. west,	6.50.
South 78 deg. west,	3.50.
North 72 deg. west,	5.50.
South 86 deg. west,	7.80 at 5.00 head of rapids.
South 6½ deg. west,	1.45 to beginning.

Surveyed September 5th, 1845, by Jos. H. Mullette, deputy surveyor.

GUY H. CARLETON sworn for defense:

Mr. Carleton, what is your age?
63 Sixty-nine years.

What time did you move to the county of Chippewa, Mr. Carleton?

In 1854.

Have you resided in this county ever since?

Pretty much ever since, yes, sir.

Pretty much ever since?

One or two winters spent below is the only break.

What is your business?

Surveying mostly.

How long have you practiced surveying as a profession?

A good many years—since I was eighteen years of age. Some years I have not done much at it, but other years I have been entirely engaged in surveying.

You were formerly county clerk?

Yes, sir.

Been county surveyor?

Yes, sir.

Do you know the tract called the Indian reservation, as designated upon the map of the Whelpley survey of the village of Sault Ste. Marie?

I do, sir.

What time did you move into the village of Sault Ste. Marie, Mr. Carleton?

In 1858.

Eighteen hundred and fifty-eight?

Yes, sir.

Do you know where the island called Island No. 5 is?

Yes, sir.

That is, located with reference to the Indian reserve; where is that?

On the north side of the canal; a small channel passes between the mainland and it.

64 The channel is between this Island No. 5 and a part of this Indian reserve?

Yes, sir.

There is a triangular piece of the Indian reserve on the opposite side of the channel from the island is there not?

Yes, sir.

In 1858 were there Indians living there opposite the island on the Indian reserve?

Yes, I think there was, yes sir.

Have houses there at the time?

Yes, sir.

What time were the Indians removed from that reserve, if you know; about how many years ago?

It is some three or four years, perhaps five years ago.

But up to that time Indians had resided on that part of the Indian reserve?

Yes, that is my recollection; that is my knowledge of it.

Do you know the time of the building of the St. Mary's Falls ship canal—about what time it was commenced?

Yes, sir.

About what time was it commenced?

I think it was commenced in the fall of 1852, in the fall of '52 and work was carried on during the winter of '52 and '53 and also during '54 and '55. It was completed in 1855.

What is the general direction of that ship canal?

Nearly west—a little south of west.

Through what tract of land was that ship canal built?

Through the Indian reserve. The west end crosses a portion outside the reserve.

The canal was dug in a westerly direction through this Indian reserve?

Yes, it crosses it diagonally somewhat.

And runs somewhat lengthwise with it?

65 Yes, sir.

It is all in section six, is it not?

No, sir, there is a little portion of it in one west.

Were you here in the village at any time previous to 1858?

Yes, sir.

How many times had you been here previous to 1858?

During—do you mean my residence in the county?

Yes, sir.

Quite frequently. I used to come up, possibly twice a month, perhaps not quite so frequently as that, but sometimes perhaps twice a month, and then sometimes for not a couple of months; about that often when I lived in the lower part of the county.

The Chippewa Portage Company, I call your attention to that—do you have any recollection of such a company?

I know of them; I know they operated here.

Do you know what they did?

They had a horse railway across the Portage here, and conveyed provisions and supplies to the upper end of the canal, to be shipped on to the west.

A horse railway, was it?

Yes, sir.

How was that constructed, laid on plank?

Ties were laid down and rails were laid upon the ties, same as roads are usually constructed.

What was the general direction of the road used by the Chippewa Portage Company?

Westerly.

Now, did any portion of it come through this Indian reserve?

Yes, sir.

How far did it run on the Indian reserve?

It passed across the southeast corner of the reserve, passed along Water street and curved to the north until it struck the

66 north line of Water street; then curved to the southward and crossed the canal reserve in a southwesterly direction.

Now, do you recollect the road that was used by Spalding and Bacon?

I do.

Where was that road?

That was a plank road as I remember it. It passed up beyond Portage street, along River street, and then along Portage street to the west. It crossed the canal of course where it is now built and run alongside of what we call the raceway to the west end or head of the Portage.

Now, that road was used by Spalding and Bacon for portage purposes on any part of the Indian reserve?

I think not, as I remember it. It shaved very close to the southerly line of the reserve, but I could not say that it was on any portion.

How was it at the west end?

At the west end it ran alongside the raceway.

Now, as it got up to the head, was there any street there south of what was called the Indian reserve on the Whelpley map—that was called Portage street, was it not?

South of the Indian reserve on the map prepared by Whelpley?

Yes, on the map prepared by Whelpley a portion of the Portage road runs right along the raceway.

The raceway as it is now laid down north and west of the canal is about the center of Portage street.

The two boundaries of the street, the north and south boundaries, are about an equal distance from the raceway, that is the old raceway?

Yes, sir; that is, as Whelpley has it laid down. I notice that in Whelpley's map he has not noticed the raceway, but that is the fact as it is laid down.

67 At the head of the portage, so called, do you know of there being any warehouses there, from 1854, or before or after that?

I think there was some about that time. I was here in '51 and '2.

They were then there?

Yes, they were there then.

What were they used for?

For storing goods.

Was there a village then on or about section six?

There were a few residences, yes, sir.

Where at that time was Water street, on what part of section six was Water street and is it now?

It would be in the northeast fractional quarter of section six.

In the northeast fractional quarter of six?

Yes, sir.

If the west line of the northeast fractional quarter of section six had been extended northward, it would still have been a fractional quarter, would it not?

Yes, sir.

If the west line had been extended north it would have run into the Indian reserve?

Yes, sir.

But still that survey would not have made a full quarter section?

I should say not.

For the reason of it striking the river?

Yes, sir.

And so the River St. Mary's and the Indian reserve both contribute to make this northeast fractional quarter of section six a fractional quarter?

Yes, sir.

68 You say that Water street was on this northeast fractional quarter of section six?

Yes, sir.

Now, in 1858, and since that time, what has Water street been occupied for?

Business places mostly—some residences.

Do you recollect any people who had stores on Water street in 1858–'9 and '60?

Yes, sir.

Who were they?

Mr. Barbeau.

Peter B. Barbeau?

Peter B. Barbeau, and I think M. B. Cady, M. B. Spalding——

William P. Spalding?

Yes, sir.

And Riley's saloon?

Yes, sir.

Yes, sir, and Hopkins'.

Where the Club house is now?

Yes, sir.

Do you recollect of any one else, Mr. Carleton? Where was the Chippewa house in 1858 and '9?

Just about where it is now.

On Water street?

Yes, sir.

South side?

Yes sir, and Mr. Van Rensallaer had a store there on the north side.

Now, goods which came from any part of Lake Superior west of the village of Sault Ste. Marie previous to the building of the canal had to go over this portage that you speak of if they were going below?

Yes, sir.

69 That was the way goods were carried from below up to points on Lake Superior, when they came to the village they had to be carried across this portage, transported?

Yes, sir.

And do you recollect where the American Fur Company's place of business was in 1858–'9 and '60?

I recollect the old building they occupied.

Where were they?

On Water street. The warehouse is on the north side and the residence on the south side and the store.

You recollect you say of Indian houses, and Indians residing

therein, on a part of the Indian reserve in 1858–'9 and '60, and ever since up to the time of their removal?

Yes, sir.

What were those Indians engaged in doing when they lived there?

Fishing.

What did they do with the fish?

Retailed them, sell them to the post and to steamers and vessels that passed through and to the people about town.

They sold them to the boats that came through for the use of the passengers and crews?

Yes, sir.

What kind of land was that Indian reserve as designated on the Whelpley map?

Pretty poor land, if that is what you have reference to; there is not much of it, the rock would come pretty close to the surface.

The rock would come pretty close to the surface?

Yes, sir.

Fit for anything in particular as far as agriculture was concerned?

70 I should say nothing very much; pretty poor—poor lookout for agricultural purposes.

The canal which was built through this Indian reserve from 1852 to 1856 had been used as a canal up to within a very few years, has it not?

Yes, sir.

For the purpose of carrying passengers and goods and freight from points in the lower peninsula to points in the upper peninsula of Michigan, is it not, and other places?

Yes, sir.

Have you a knowledge of the survey as made by Whelpley—you have seen a certified copy of the Whelpley map?

Yes, I have seen Whelpley's map very frequently; am quite familiar with it.

And you have seen the original of what was called on the United States map as the Indian reservation. Is there any difference, Mr. Carleton, between the two surveys, the survey of Whelpley and the original survey?

No particular difference; there may be a little difference in the meander lines along the shore.

There is a variation in the meander lines?

Yes, and the raceway Whelpley gives no account of. He has meandered the shore line of the rapids, I should say, very carefully.

I call your attention—here is something to assist your recollection (Mr. GOFF: It is a draft or map prepared by himself at my request for my own use. It shows the Indian reserve.) This colored part is the Indian reserve?

Yes, sir.

And these blue lines indicate the canal?

The canal grant, yes, sir.

DONNELY: Under the act of 1852?

GOFF: Yes, sir.

71 I want to call your attention to the part of the Indian reserve which is made triangular by the canal grant opposite Island No. 5.

Yes, sir; that is right in there (pointing to the map).

The island is right over in there?

Yes, sir.

Now, on that triangular strip was where the Indians lived in 1858–'9 and '60?

Yes, sir, they lived along down further below where they had residences; they lived on the canal grant for quite awhile.

They occupied both the canal grant and the Indian reserve?

Yes, sir.

How much of the village was there in 1858–'9 and '60 at Sault Ste. Marie, Mr. Carleton?

What population do you mean?

Yes, sir.

Well, in the vicinity of Water street I should say there were three or four hundred, and stretched along down the river as much more; I should think a thousand population would cover the whole.

When you came here in 1858 what did you engage in?

I was teaching school and surveying occasionally.

Speaking of the south boundary of the Indian reservation, as laid down upon the Whelpley map, what do you say in regard to that—that it was not well defined?

It is not laid down at all; that is the raceway. It is not laid down at all, and I do not find in his field-notes any reference to it. I have never been able to discover anything in his field-notes with regard to the raceway.

Does it give anything about the south boundary?

No sir, no mention so far as I could discover.

Was that the map made under the act of 1850?

Yes, sir.

72 It is shown as an Indian reserve?

Yes sir, but the south boundary is not laid down as far as I can discover.

Cross-examination:

Now, Mr. Carleton, you have by long experience and intimate connection with surveys and subdivisions here become quite familiar with all this public land?

Yes, sir.

You tell us that the Whelpley map made under the act of 1850 did not give any southern boundary of what was called the Indian reserve.

It is not represented upon this map, no sir, and I have never been able to discover in his field-notes any reference to it.

Does it make any reference to the Indian reservation?

I think it does make a mention of the Indian reservation and he represents this portion of the reserve upon his map.

Simply marks an indefinite piece upon his map as a reserve?

Yes, sir.

Now, you say that included in the 36.50 acres of the so-called Indian reservation there are portions of fractional section—of the northwest quarter of fractional section six and the northeast fractional quarter of section six?

Yes sir, and that is all.

About how much of the 36.50 acres would be in the northeast quarter?

Possibly one-half of the 36 acres—perhaps not quite one-half.

This is Portage street (pointing to map)?

That is the raceway. Portage street is not represented on that, but, as I said before, it would be nearly the center of Portage street.

How do you locate the raceway?

By the field-notes of the Government survey of 1854. I
73 measured that line myself in 1845; ran those lines and entered this whole course in here.

You were on the survey at that time?

Yes, sir.

What was the object in laying down the raceway?

That was the instructions from the department.

Simply a monument?

It was the instructions from the department, and showing an Indian reserve bounded by this raceway.

The map that was finally made did not show that?

Yes, the map made by the survey that I was on did.

That was in 1845?

Yes, sir.

Now, in 1854 you came here?

Yes, I moved into the lower part of the county.

And you came here to live in 1858?

Yes, sir.

Now, how many houses were there at the sault on Water street at that time?

O, there was on the north side of Water street fifteen to eighteen of all kinds, saloons, places of business and residences.

Did the survey that you made in 1854 of this Indian reservation, include any portion of the village?

No, I do not recollect that at that time there was any building there, except on the shore there was some camps and Indian wigwams.

That would be on this lot possibly?

Yes, and below that.

Extending as far as this tail raceway?

No sir, there was a warehouse right there.

Whose was that?

I do not remember the man's name.

The warehouse was on the river front?

74 Yes, sir.

Directly outside of the Indian reserve, so called?

Yes, sir.

On the opposite side of the tail race from the Indian reserve?

Yes, sir.

But there was no occupation of this tract of land between the raceway and the river?

Not to my recollection.

Except by Indians?

Not at that time.

Now, had any people gone to live on there in 1854 except Indians?

Let me see, '54, that is the year I moved into the county; I think not.

You think not?

That is my recollection.

So that any village that existed, if at all, existed on lands that would be outside of the Indian reserve?

Yes, except those Indians.

You say that was in 1845?

That I was here? Yes, sir.

Who was the surveyor general?

I think the surveyor general's office was located at Cincinnati at that time; I don't think it had been moved into Michigan.

He was the surveyor for the northwest territory?

Yes, and I don't recollect now when he was appointed in Michigan.

Now, in making that survey in 1845 did you mark the limits of the military reserve?

No, we only measured around the occupation of the military—that is the barracks.

75 What do you mean by that?

The stockade or high posts.

Did you put that on your map?

Yes, measured of course around the high posts all around, noted the block houses, and noted everything in connection with the occupation of the fort, but we made no deviation on account of the military reserve.

You did not break your lines?

No sir, we ran the quarter section lines between five and six right through.

Do you know the measurements and lines of the existing occupation there?

Yes, when we struck the cemetery grounds for instance we noted that, and when we reached the traveled road, Portage street, we noted that, and then went right on through the garrison grounds to the river with our line.

Now, at the upper end you say there were some warehouses?

Yes, there was some earlier; they had been removed when I came here in 1858.

Were they there in 1845?

Yes, one or two.

How many were there after you moved there?

I think they had been pretty much removed, they had been abandoned.

And this horse road had been abandoned when the canal was built?

Yes, sir.

And also the other Portage business carried on by Spalding and Bacon?

Yes, sir.

So as to whether Whelpley reduced the Indian reserve or increased it you cannot tell from this map?

No sir, nor from his field-notes.

76 And then so far as that is concerned your understanding is that there was no fixing of that reserve under the act of 1850?

Objection is made to his giving what his understanding of the construction of the law is.

From your knowledge as an engineer and surveyor, and your familiarity with all these lands here and the Whelpley survey and your knowledge of the ground then, you would give us to understand that there had been no fixing of the limits of the reserve under the act of 1850?

No, I should say not; at least, there is no record of it that I have been able to find.

Redirect examination:

I want to call your attention to this map here. Now, I show to you a part of this Indian reserve in question in this suit and call your attention to the south boundary of the Indian reserve. What was there at the west end of the reserve, south of the reserve? What is that there?

A portion of Portage street.

Then Portage street is located on the south of this reserve?

It is located part of it on the south side and part on the north side, as I have verified by locating the lines.

You are referring to the mill race?

Yes, sir.

But, as it shows on this map, the part south of the boundary of the Indian reserve is Portage street?

Yes, as shown on this map.

And south of Portage street, which is the south boundary of part of the Indian reserve, is lot 3, as adju-cated under the act of 1850?

Yes, sir.

And part of the southern boundary is part of claim No. 4 is it not?

77 Yes, sir.

And part of the remaining boundary is the canal reservation is it not?

Yes, it is so laid down on this map.

What are these figures on the south lines of this map—on the south line of this street?

That is the course that the line of the street bears and the distance to the intersection of the canal grant from the river front.

So the courses and distance as laid down on this part of the Indian reserve would enable you to survey it?

Yes, to retrace it.

To retrace it?

Yes, sir.

Recross-examination:

What do you mean by retracing it?

Picking up the old lines as we find them recorded in the field-notes. Retracing means that we follow out the original line from the recorded field-notes that we have as a guide. Of course the variation of the compass at this time and a long time ago will be somewhat different, but there are always some objects that we can note so as to regulate that.

Redirect examination:

I call your attention to the certified copy of the Whelpley map, and to that part of it which is south of the canal reserve, and between the canal reserve and Portage street?

Yes, sir.

Now, I call your attention to the words "railroad track," ¼ links gauge—what does that indicate?

That means the width the rails are apart.

The rail of what?

78 The railway track.

What railway used to run there?

A horse railway.

That ran on a course as indicated on this map?

Yes, sir.

This red line marks the course of this railway track?

Yes, sir.

And where the north line of Portage street intersects the south line of the canal grant is where the track ran directly west is it not?

Very nearly so, I think; that is just about right.

Taking this part of the Indian reserve, to which I have just called your attention, state if you know of there being any occupancy of this Indian reserve at any time years ago.

Yes, I recollect very distinctly two buildings being there, one was a saloon, and the other was the residence of Chief Shawano.

When was that?

Somewhere about 1867 or '68.

That was after the war?

Yes, after the war.

You recollect of there being any remains of an old mill on this part of the reserve here?

I have a slight recollection of seeing, when I was here in 1854—I remember some remains of an old mill in the vicinity of where the engineer's building is now, which they occupy on the canal, or rather on Portage street.

That is at the corner there?

Yes, sir.

Recross-examination:

This horse railway was a temporary matter, built to carry goods across the Portage?

79 Yes, sir.

And ceased to be of any use when the canal was built?

Yes, sir.

Redirect examination:

The reason that it ceased to be of any use was because the work that was done by the railway was then done by the canal and ships passing through it, was it not?

Exactly.

Were you acquainted with Ebenezer Warner in his lifetime, Mr. Carleton?

Yes, sir.

He died about how long ago, do you recollect?

Seven or eight years I think sir, about that.

Did you used to be deputy United States marshal?

Yes, sir.

Did you ever have Ebenezer Warner in charge for a criminal offense?

Yes, sir.

Objected to as incompetent and immaterial.

Charged with being a defaulter to the Government?

Yes, sir.

Mr. Carleton, have you seen this certified copy of the map of the Whelpley survey of the village of Sault Ste. Marie?

Yes, sir.

You may state whether or not this tract designated on there as Indian reserve appears upon the map of the village on the certified copy?

It does.

Objected to as the map is the best evidence.

80 Recross-examination:

Mr. Carleton, the survey made by Whelpley had reference to the laying out of private claims, had it not, and the streets?

Yes, sir.

Was that not the only survey that he made of the village, the laying out of private claims proved up, under the act of 1850?

He retraced the original survey; he retraced the section lines.

But did you not know that his duty extended only to the laying out of private claims?

Objected to as the act will show his duty.

That seems to have been his work.

Now, Mr. Carleton, you have lived in Sault Ste. Marie off and on ever since 1845?

No, sir.

1848?

1858.

But you were here as early as 1845?

Yes, sir.

When was the village of Sault Ste. Marie incorporated by the board of supervisors, in 1875 was it not?

I think along about that date.

Objected to on the grounds that the records of the board of supervisors is the best evidence.

Were you county clerk?

I think not; I am not certain. I may have been county clerk or one of the board possibly. It is some time ago and I don't just remember.

You remember it was not incorporated until along in 1876 by the board of supervisors?

Yes, sir.

You were a member of the board of supervisors at that time?

It strikes me that I was.

Were you not mistaken, Mr. Carleton, yesterday, about the
81 location of Portage street along on the raceway? With reference to its position with regard to the raceway?

I think not.

Look at that?

A paper is shown to witness, who answers—

That is the old Portage road sir; that was south of the raceway, but it is not the location of Portage street as put down by Whelpley.

Was there ever any street beyond the canal since its construction since Whelpley's survey.

Not traveled, but it lies there.

What is the difference between the old Portage road and the present Portage street?

The old Portage road as I understand it——

Was that the road the tram road was on?

No, the plank road and tram road was farther south.

The tram road was the old Portage road?

Yes, sir.

That is the present Portage street?

So far as it goes up to the canal it is.

Up to the canal?

Yes, sir.

Now just look at this map, certified June 9th, 1847, by Lucius Lamb, surveyor general, and see if that map shows the raceway and also Portage road, the two distinct?

Yes, this map shows it.

Shows them both entirely distinct?

Yes, sir.

Portage street south of the raceway?

Exactly; there is no question about that at all. That is the old Portage road as we call it.

Now, that road has continued to be in the same location has it?

82 Yes, up to the canal.

Up to the time it strikes the canal right of way?

Yes, sir.

Well, Portage street never went across the canal?

It never has been traveled; it is laid down on the map simply, but has never been graded and used.

Ever been considered a public highway?

I don't know as to that.

Has it ever been used as a public highway by the people of the village since the canal was built?

No, I think not.

As a matter of fact, the Government never parted with that piece beyond the canal, or never parted with its title?

Objected to on the ground that it is impossible for a witness to know about the Government having parted with its title.

Has it ever been worked beyond the canal?

No, sir.

Is there any difference between the line of what is marked on the map north of the canal as Portage street and that portion of the old Portage road which, if it at present existed, would be north of the canal?

Yes, I think there is a little.

And is not this upper Portage street a direct continuation of this?

Yes, sir.

Practically on the same line?

Yes, sir.

Now if this portion of Portage street south of the canal was also south of the raceway, and the raceway ran as fixed upon this map, how does it come that you can locate this portion of Portage street on the raceway?

83 The witness points to a point on Portage street and in the west line of claim 78 and to the west end of Portage street as it appears upon the Whelpley map, and says—

The line of the raceway continues along in Portage street south of the canal and also continues a straight course to the west end or head of the canal, but the old Portage road turns to the left after

you get across the canal and runs to the south of the present location of Portage street.

That is not the question at all. You say that the present Portage street south of the canal is on the same line as the old Portage road?

Yes, I think it is very near that.

And the portion of Portage street as laid down on the Whelpley map north of the canal is right on a line with what is now known as Portage street. That is true, is it not?

What is that?

That the portion of the road out west and north of the canal is right on the line with the portion now used as Portage street?

Yes, sir.

Now, if the old Portage road, which was identical with the present Portage street up to the canal, lies south of the raceway, the raceway lying up north of it here, and right parallel with it, how do you fix this part of Portage street as being on the raceway now, and it also being a direct extension of the old Portage road. Look at this map now the present Portage street runs up to here, and then it goes off to Canal street?

Yes, sir.

Now, the mill race lay 50 or 60 feet north?

It lay nearly in the center of Portage street as laid down by Whelpley.

Do you know how the two lay, whether the old Portage
84 road and the raceway were together, one on top of the other; regardless of Whelpley's survey, how is that?

The raceway on the north side of the canal I am very confident, in fact I know that it is about the center of Portage street.

Still, you don't know that Portage street ever was moved?

What, on the north side?

Yes sir; that is, that the old Portage road never was moved?

O, I did not say that; the old Portage road my idea is that it ran to the south of Portage street on the north side. So that this piece here is not the old Portage road. The old Portage road was in existence in 1845?

Yes, as a sort of track; the road I was acquainted with in 1845 followed along the raceway bank. I don't know of any other graded road aside from that.

Redirect examination:

Where was the plank road, the railway; was it on that bank too?

It was to the south of the raceway.

Recross-examination:

Just look at this and see if it is your handwriting (a book is handed witness)?

Yes, sir.

What is this book Mr. Carlton?

The proceedings of the board of supervisors.

88 Yes, sir.

And the part that was lying south of the canal would be in what quarter section?

In the northwest fractional quarter section.

And the part which lies opposite to Island No. 5 would be in the same quarter section?

Yes, sir.

And the part which lies north of the canal and west of this Island No. 3 would be in the northwest fractional quarter?

Yes, sir.

What was that road—you spoke of a road that lies in Portage street at the west end there, west and south of the Indian reserve—what was that road used for, the road which is now covered by Portage street?

The race runs right in the middle.

The race did run in the middle of it once?

Yes, it is there now.

B. B. POWELL sworn for defense:

Mr. Powell, you live in the city of Sault Ste. Marie?

Yes, sir.

And are connected with the electric light company here?

Yes, sir.

How long have you been connected with that company, Mr. Powell?

Well, ever since its organization.

How long ago about was that?

Well, I came here a year ago last August; the company was not organized until some little time afterwards, in October, I believe.

Are you familiar with the tract where this electric light canal is?

Yes, sir.

Has there been a canal built over there on that ground?

89 Yes, sir.

Objected to as incompetent and immaterial, and that it is not in support of any issue made in the pleadings.

Now, Mr. Powell, are you familiar with the cost of building that canal over there?

A general objection is made to testimony in regard to these matters.

Yes, sir.

What is the cost of building that electric light canal as it is called?

About twenty thousand dollars.

And the power-house; is there a power-house on there, or what is your name for it? A station?

Yes, sir.

Well, I don't know that I could give you the cost of the house, but the cost of the house, canal and building account aggregates about thirty thousand dollars. I think it stands on the books a little less than that.

There is an electric plant there, and this canal furnishes power water power?

Yes, sir.

What is that land chiefly valuable for where this electric light plant is located?

Objected to as incompetent, irrelevant and immaterial.

I don't know that it would be good for anything only for the purpose of water power.

What is the soil over there, rock?

Well, yes, it is rock.

DONNELLY: Any worse than thousands of New England farms?

Well, I never have seen any New England farms, where they cultivate them as bad as that; they may be though.

90 What kind of soil is that over there anyway?

There are a great many rocks on it, and a good deal of it is a mass of stone.

Cross-examination:

You have an electric light plant there?

Yes, sir.

I would like to know how much we are going to get; you say it is worth $30,000?

That does not include the whole of it.

There is a lot of it that you could take away?

There is some machinery there that could be taken away.

How much is that worth? The plant aside from the canal?

Well, the machinery is worth about $15,000.

Out of the $30,000 there is $15,000 for machinery?

No, there is thirty thousand besides the machinery, and there is about $17,000 or $18,000 worth of machinery.

When was that all put there, last year?

Yes, last year.

What time last year?

Well, between December, 1887, and the present time.

Well, the works began to operate last fall?

Last August.

Redirect examination:

In what year was the canal built there?

Well, the work was begun there in September, 1887.

And what time was the canal finished, what time in 1888?

Well, about the first of February.

Now, the total amounts of the improvements that have been put onto the tract there, occupied by the electric light company and utilized by them, is about how much, the total amounts of the improvements?

91 The total amount that is on that land, you mean?

Yes, sir.

About $47,000, between $45,000 and $50,000.

WILLIAM P. SPALDING recalled for cross-examination:

Mr. Spalding, have you since yesterday made any search to find the receipt that you got from Washington of your protest?

No, sir; I forgot it when I was at the house.

Well, have you thought over as to what officer you forwarded the protest to? Have you refreshed your recollection in any way? You were a little in doubt yesterday whether it was to the Land Office or the Secretary of the Interior?

I have not thought of it since; I presume if I find that receipt it will refresh my memory.

Do you have any idea now which officer you sent it to?

My impression is that it was to the Secretary of the Interior.

What time did you put the deed on record that you obtained from Adsit?

It shows.

Well, was it after you had heard that Chandler had made the location?

Yes, sir.

You put it on immediately after you heard that Chandler had located the scrip?

Well, it was after it.

You stated something about not taking any appeal; I wish to ask you why it was that you took no proceedings after you found that the Secretary of the Interior had decided in favor of Chandler; or, I will change the question—did you take any legal proceedings before the suit in this case?

Objected to as immaterial and irrelevent.

I believe I stated yesterday that I did not on account of want of funds.

92 And you stated so this morning; the reason is the same this morning?

I did not take it back; those are the facts in the case.

Now, in 1881 and 1882 you were the owner of a house and lot here in the village of Sault Ste. Marie, were you not?

No, sir.

Objected to as incompetent.

Mr. Spalding, did you ever have any communication with Mr. Chandler whereby you notified him of your claim in this tract of land?

I did not to my recollection, because it was universally known that I had a claim to it; everybody knew it.

And from that reason you refrained from having any conversation with him about it?

Yes, I did not suppose that his claim would interfere with me at all until I learned of it.

I don't understand that.

I did not suppose that his laying the Porterfield scrip on there would interfere with my claim particularly; I thought it was worthless.

Redirect examination:

Thought what was worthless?

His laying his scrip upon that.

Just look at this certified copy of the Whelpley map; now just indicate on that map with reference to what is known as the basin of the canal.

This is the basin of the canal.

Whereabouts with reference to what was the Adsit house?

Just back of this and a little above it.

What do you mean by above it?

West.

What by back of it?

93 North.

North and west of it?

Yes, sir.

On that portion of the tract then west of the quarter-section line?

I don't know where the quarter-section line is.

This is it here; now is it west or east of the quarter-section line?

It is to the west of the quarter-section line.

That is the house and place you referred to yesterday that he occupied while pre-empting?

Yes, sir.

Cross-examination:

Now, Mr. Spalding, will you look at that part of the Indian reserve marked upon the map of the Whelpley survey as lying south of the canal grant, and state if Byron B. Adsit ever had any dwelling on that part?

No, sir.

Did he ever cultivate that part?

No, sir, I think not.

Did he ever do anything on that tract of land to indicate his claim of ownership to that—this part here?

It was all connected here as Indian reserve clear through and he claimed that his pre-emption——

Did he ever do anything on this part here?

No, sir, not to my knowledge.

Never raised any crop there?

Not to my knowledge.

It would be good land to raise crop on if he wanted to?

I don't know.

Take this part of the Indian reserve that lies opposite of the Island No. 5, or a little to the west there of it, that now was

94 the part occupied and lived on by the Indians at the time of his pre-emption?

That's a kind of a camping ground.

Now, did he ever do anything upon the tract where the Indians were?

I don't know.

Do you know of his having lived in any of the Indian houses at that time?

No.

Do you know of his ever being or dwelling with the Indians?

I know nothing about it.

So that you know nothing of his occupancy of that part of the Indian reserve?

No, sir.

Nor the part south of the canal?

No, sir.

Redirect examination:

Except, of course, as they were parts of the whole tract?

Yes, the pre-emption allows a hundred and sixty acres and it can be taken all in fractions if they lay continuous.

That is your understanding?

Yes, sir.

Paper is here shown witness and he is asked to look at it and see if it is his signature.

That is my signature.

That is the same sort of a document you sent?

That is a copy of it.

Then look at this letter here, (the date of the letter is Jan. 18th, 1882).

The above-mentioned letter and paper (copy of protests) are offered in evidence.

The letter is marked Compt. Ex. "H."

95 COMPLAINANT'S EXHIBIT "A."

No. 2595.

RECEIVER'S OFFICE AT MARQUETTE,
MICHIGAN, *Dec. 5th*, 1859.

Received from Byron B. Adsit of Chippewa county, Michigan, the sum of ($45) forty-five dollars and sixty-three cents; being in full for the lot designated on the map of the United States survey, in the land office at Marquette, Michigan, as "Indian reserve," subject to all the provisions, requirements and conditions of an act of Congress, entitled, "An act granting to the State of Michigan the right of way and a donation of public lands for the construction of a ship canal around the Falls of the St. Marie in said State," approved August 26th, 1852, of section No. (6) six in township No. 47 north of range No. 1, east, containing (36) thirty-six acres, and fifty ($\frac{50}{100}$) hundredths, at $1.25 per acre.

(Pre-emption act 1841.)

($45.63.)

EBENEZER WARNER, *Receiver.*

COMPT. EX. "B."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March 2nd*, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed papers, pages one to eighty-eight, inclusive, are copies of certain letters and papers in relation to a tract near Sault Ste. Marie, Mich., located in township 47, range 1 east and of office circular of Jan. 24, 1859, regulating appeals and the same are true and literal exemplifications of the originals, on file and of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. M. STOCKSLAGER,
Commissioner of the General Land Office.

96 HEADQUARTERS 4TH MILITARY DEPARTMENT,
DETROIT, *December* 11, 1846.

GEN*tlemen:* I deem it proper to explain to you why this map has been so long in my hands. The fact is that it is on so contracted a scale that with all my knowledge of Fort Brady and the grounds around it, I dare not attempt to trace on it the bounds of land that I considered necessary for military purposes. I therefore sent to Lieutenant Westcott, commanding Fort Brady, a plat of what I wished him to survey for military purposes. This he has done so correctly that Mr. Lyon, the surveyor general, has from it been able to trace on the map you sent me what you desire me to do. In making this reserve I kept in view the probability that some day the Government might build there a permanent work.

As you have in your letter of instructions to me on this subject desired me to give my views in relation to that post, I shall merely observe that I believe that the best interest of the Government and that of the community at large would be benefitted by the Government not offering for sale any of the lots fronting on the line of the canal from the reserve to the head of the rapids believing as I most assuredly do that the day is not far distant, when a canal will be made there, if not by the General Government, by Michigan and the adjoining States. The quantity of the land that it will require to receive the rocks and other materials that will be taken out of a ship canal there, no one can know, and until the canal is made those lots had better remain with the present owner. Should they go into the hands of individuals before the canal is completed great would be the expense to get back the land necessary for the completion of this important work.

I am, General, very respectfully your most obedient servant,
(Signed) H. BRADY,
Brig. Gen'l, U. S. A.

Brig. Gen'l R. Jones, adj. gen'l U. S. Army, Washington, D. C.

97 ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *December 24th*, 1846.

Hon. W. L. Marcy, Secretary of War.

SIR: Pursuant to the instructions contained in the memorandum from the War Department of the 3rd of October, relative to laying off a reservation of the public lands at Fort Brady, Brigadier General Brady, whose position as commander of the department and intimate acquaintance with the localities particularly qualified him for the duty, was directed by letter dated October 6th, to report on the subject. His report was received the 21st instant, and a copy, with a map of the reservation he proposes, is herewith respectfully submitted. I concur entirely in the views expressed in the closing paragraph of General Brady's report and beg to commend them to the favorable consideration of the Secretary of War.

I am, sir, with great respect, your obedient servant,

R. JONES,
Adj. General.

SURVEY- GENERAL'S OFFICE,
DETROIT, *June 9th*, 1847.

SIR: At the request of Brig. Gen. Hugh Brady, U. S. A., I transmit herewith a diagram of a part of fractional township No. 47, north range No. 1 east meridian, Michigan, showing the connection of the public surveys in said township with the military reservation embracing Fort Brady, as surveyed under the direction of the War Department.

As this reservation will, of course, be withheld from sale I have found it necessary since ascertaining its limits to lay out anew
98 the fractions around it, and I have to request that you will be pleased to make the corresponding alterations on the plat in your office.

Very respectfully, you- obedient servant,

LUCIUS LYON,
Serg't General.

Hon. Richard M. Young, Com. Gen'l Land Office, Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
WASHINGTON, *August 14th*, 1847.

SIR: I have the honor to acknowledge the receipt of your instructions to report upon the quantity of land which it would be expedient to reserve at the River St. Mary's, Michigan.

I have caused that part of the accompanying plan to be colored red which I would recommend to be reserved from sale.

This will cover all that will be necessary in my judgment, both for military and other Government purposes.

Respectfully, sir, your obedient servant,

I. I. ABERT,
Col., Corps T. Eng'rs.

Hon. W. L. Marcy, Secretary of War.

WAR DEPARTMENT, WASHINGTON, *August* 25, 1847.

SIR: I have the honor to enclose herewith reports from the adjutant general, the acting chief of the engineer bureau and the colonel of topographical engineers, in relation to a tract of land adjacent to Fort Brady on the St. Mary's river, Mich., required for mili-
99 tary purposes, with a diagram showing the limits of the tract; and to request that you will cause to be reserved from sale the sections colored in red on the enclosed plat embracing sections 4, 5 and 6, of township 47, range 1 east and an additional tract adjoining the last-named section on the west not designated by number on the plat.

Please furnish this department with a copy of any order you may give on the subject.

Very respect'ly, your obedient servant,

J. Y. MASON,
Acting Secretary of War.

Hon. R. M. Young, Com. Gen'l Land Office.

GENERAL LAND OFFICE, *August* 27, 1847.

SIR: The acting Secretary of War, in a communication of the 25th instant, requested that fractional sections 4, 5 and 6, of township 47, north of range 1 east and fractional sections 1 and 2 of township 57 north, range 1 W. as colored in pink on the enclosed diagram, should be reserved for the use of Fort Brady at the Sault Ste. Marie, in Michigan. Fractional sections 4, 5 and 6, township 47 north, range 1 east, were reserved for public uses, under the act of the 1st of March, 1847: with other lands, by order of the President of the 3rd of April, 1847; and I have now the honor to request, that application be made to the President for an order for the reservation of fractional sections 1 and 2, township 47 north, range 1 west, under the same act, for the use of Fort Brady and requested by the acting Secretary of War.

With great respect your obedient servant,

RICHARD M. YOUNG,
Commissioner.

Hon. R. J. Walker, Sec'y of the Treas'y.

100 TREASURY DEPARTMENT, *August 30th*, 1847.

SIR: I have the honor herewith to submit a communication from the Commissioner of the General Land Office under date of the 27th inst., requesting, at the instance of the acting Secretary of War, the reservation under act of 1st of March, 1847, of fractional sections 1 and 2, of township 47 north, range 1 W. for the use of Fort Brady at the Sault Ste. Marie in Michigan.

The enclosed diagram will exhibit the location of the lands proposed to be reserved.

I concur with the Commissioner in the request that your sanction may be given to the proposed reservation.

I have the honor to be,

Very respectfully, your obedient servant,

R. J. WALKER,
Sec'y of the Treas'y.

The President of the United States.

REGISTER OFFICE, SAULT STE. MARIE, *March 17th*, 1852.

Hon. J. Butterfield, Commissioner, etc.

SIR: In pursuance of the second section of the act of the 26th of Sept., A. D. 1850, providing for the examination and settlement of claims for the land at the Sault Ste. Marie, Michigan, a letter was addressed by the receiver and myself as soon as we were furnished with the necessary instructions and maps from your department to the Secretary of War requesting him to direct the proper military officer to designate the position and extent of the military reserve upon the map, in order that we might be able to proceed to the discharge of the duties imposed upon us by said act.

No officer, however, has been designated for this purpose so far as I am advised, certainly there was none previous to the close of navigation last fall.

101 The claims to land under the law were all duly filed in the land office, within the time prescribed by the law (as far as I know them) and it now only remains for the War Department to designate the necessary reserves, to enable us to consummate our duties under the law, a matter of great anxiety to those immediately interested. It is certainly desirable that we should be enabled to commence the adjudication and adjustment of these claims immediately upon the opening of navigation in which case it is quite possible we may be able to report them to your office before the close of the present session of Congress.

I have thought proper in view of this to call your attention to the subject and to request that the War Department may be reminded of the necessity which exists of its action in the premises.

I have been informed (I know not with what truth) that it was the intention of the Government to withdraw the troops entirely from that military station. In this event it may not be the intention of the Government to retain any military reserve at that point. If this should be the conclusion it is equally important we should be advised of the fact. The Canadian government have entirely abandoned their military occupation upon the river opposite the Sault Ste. Marie, and withdrawn their troops.

Ours as a military post can hardly be considered more necessary and as the south shore of Lake Superior is now rapidly increasing in population and civilization and the Indian race with equal speed sinking into insignificance the military occupation of the fort or rather stockade at the Sault seems to be divested of all its consequence standing as it does upon a plat of ground of immense importance to the future growth of the village, its removal no doubt will be accomplished at an early day as was done in the case of the

102 fort at Detroit which was of infinitely greater importance.

If this is to be the final result certainly the present time when the legal titles are about to be settled and the village to be laid out under the provisions of the act of Congress, is most favorable to carry it into effect.

At all events and whatever be the conclusion at the War Department it is important that this land office should be advised at the

opening of navigation of the disposition to be made of the military reserves.

Very respectfully, your ob't servant,

ANDREW BACKUS, *Register.*

GENERAL LAND OFFICE, *April 29th*, 1852.

Hon. A. H. H. Stuart, Secretary of the Interior.

SIR: The act of Congress approved September 26th, 1850, providing for the examination and settlements of claims for land at the Sault Ste. Marie in Michigan rendered it necessary after adjudication of the claims that the village of the "Sault" be laid off into town lots, streets, avenues, public squares and outlots, having regard to the lots and streets already actually surveyed. The second section of that act makes it the duty of the Secretary of War to designate the position and extent of lots necessary for military purposes as also the position and extent of any other lot or lots which may be required for other public purposes, and also the position and extent of the Indian agency tract and the Indian reserve. The desired reservations were laid down by the War Department on plat No. 1 herewith transmitted together with a communication from the Secretary of War dated the 10th of March last. This was done however on plat which was a copy of the township sur-
103 vey, furnished by the surveyor general. Last fall a preliminary survey of the lots at the village of Ste. Marie was ordered, and which is yet incomplete, and on the plat of that survey marked No. 11 (herewith transmitted) have been transferred all the annotations made by the War Department on plat 1.

Col. Abert (referring to plat 1) states in his report to the Secretary of War, that "nearly all of the grounds west of the line C D and north of the line C A H (Land Office survey) will probably be found involved in settlements and pre-emption claims and it is respectfully recommended that in addition to the military reservation, all the lands between the red line C A H and the river of the Land Office survey should for the present be reserved from sale. The wharves at the upper end of the falls, have been erected only by permission and exist, or are allowed to remain only on the sufferance of the War Department."

Enclosed is a paper (drawn up it is believed by a citizen of Michigan, who had inspected Col. Abert's report, and the annotations on plat No. 1) which is signed by the Hon. Messrs. Conger, Penniman, Cass and Felch, wherein it is represented that nearly all of the claims, and nearly all of the village of Sault Ste. Marie are included in the above-described limits that it is highly important to the peace and prosperity of that community that these old claims, or titles should be speedily adjusted according to the provisions of the act for this purpose, approved September 26th, 1850, etc.

It is further represented in this paper as follows: "If we are correctly informed the line C D or westerly line of the military reservation, as marked on the Land Office survey or map No. 1 includes within said reservation, a town house and several private buildings

long occupied by citizens, and that if the westerly line of the present pickets of Fort Brady or a line so far west of said pickets,
104 as not to include any private claims, or buildings can be made the westerly line of the military reservation, without prejudice to the interests of the Government, it would remove all cause of complaint and be of great advantage to the village, in enlarging the now very limited water front, and would in our opinion give general satisfaction to the citizens of the place."

The object in submitting these papers to you is, that the whole matter may be in a position to be reviewed by the proper authorities. The duty of this office is to aim to effect such a survey as is contemplated by the 7th section of the act of September 26, 1850, to be made by the surveyor general so soon as the land officers shall have completed the abstracts of the claims, and designated their respective locations on the map as required by the provisions of the act, and as the matter now stands it would appear that such a survey would not be in harmony with the views of the War Department. A timely understanding is desirable in order that the survey may be completed at an early day.

With great respect, J. BUTTERFIELD,
Commissioner.

GENERAL LAND OFFICE, *October* 21, 1852.

Register and receiver, Sault Ste. Marie, Michigan.

GENTLEMEN: The map transmitted to your predecessors with the communication from the late Commissioner dated 14th August, 1851, under the second section of the act of Congress approved September 26th, 1850, "providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan," was supposed to be sufficient for all the purposes intended by that
105 section, and your predecessors are required to call on the proper authorities to note on the map the required reservations for military purprses, etc., but it seems that such annotations were not made as had been expected, as stated by your predecessors in their letter to this office, dated 17th March last.

Subsequently to transmitting said map a preliminary survey of the village was made by Deputy Surveyor Mullett under authority of the surveyor general, as directed by this office, and that survey was laid down at this office on a copy of the same plat furnished your predecessors, as aforesaid, and the same was furnished to the Secretary of War with a request that the existing decision of that department respecting the extent of the survey at Fort Brady might be reconsidered with a view to reducing the limits of that reserve.

Enclosed for your information, are copies of the letter of reply from the Secretary of War, and its enclosures, dated 5th August last together with a copy of the map indicating the limits of the reserve for the fort by the letters X Y Z O.

On the same map is also indicated the Indian river through which the route of the proposed canal around the rapids will pass.

The chief of the Topographical Bureau recommends the reserve of a body of land for the purposes of a cemetery south of the fort, and which it is proposed by him in his last report to be exclusively for the military, but it seems to this office that unless substantial reasons are given for the contrary, it should be a cemetery in common for all, as recommended by that office in a previous report.

Having received advice from the Secretary of the Interior the reserve for the Indian agency is not abandoned but will be held subject to further dispositions, under existing provisions of law.

You will for the present respect the reservation accordingly.

106 Transmitted herewith is a copy of the report of Deputy Surveyor Mullett transmitted by the surveyor general in his letter of December 8th, 1851, accompanied by the preliminary survey, copy of which is now furnished.

If your predecessors have prepared the report required on the town lots by the instructions from this office of August 14th, 1851, you will please review it, and make such corrections or amendments as you may deem right and proper under said instructions. If they have not, you will please prepare and send it with the least possible delay. That it may be laid before Congress at the commencement of the session, and in all cases the opinions on the claims will be limited to the portions outside the reservations shown in the accompanying diagram and the 400 feet in width extending along the line of the canal grant to the State by the act of August 26th, 1852, of which a copy is herewith enclosed for your information and government as also a copy of the instructions of this office to the surveyor general of the 9th of October, 1851, relative to the survey of the town, which are still in force.

I am respectfully, your ob't servant,

JOHN WILSON,
Commissioner.

107 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December 9th*, 1852.

SIR: The list marked B of the particular tracts of land in the vicinity of Lake Superior recommended for permanent reservation for public purposes, which was submitted with your letter of the 22nd inst., is herewith returned with the President's order indorsed thereon as recommended by you.

I am sir, very respectfully your ob't servant,

ALEX. H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

B.

A list of tracts (correctly described from the maps) recommended to be reserved for light-house purposes, in the Secretary of the Treasury's letter of the 11th of June, 1852, as per Schedule A therewith transmitted, and which are colored green on the maps hereto annexed.

State of Michigan (Northern peninsula).	Acres.
Lots Nos. 2 and 3 in section 10 and frac. sec. 15 on the mainland, T. 41, R. 4 E.	75.05
Lots Nos. 1 and 2 in section 12, T. 41, R. 4 E.	56.70
Fractional section 32, T. 51, R. 5 W.	115.50
Sec. 14 and 15 on Grand island, T. 48, R. 19 W.	554.10
Frac. sections 6 and 7 on Grand island, T. 47, R. 18 W.	240.90
Lots Nos. 1 and 2 in sec. 23, G. island, T. 47, R. 19 W.	83.60
Lot No. 1 in section 12, Grand island, T. 47, R. 19 W.	40.60
Lot No. 1 in section 14, Grand island, T. 47, R. 19 W.	.40
Lot No. 2 in section 21, Grand island, T. 47, R. 19 W.	64.25
Lots No. 2, 3 and 4 in sec. 22, Grand island, T. 47, R. 19 W.	145.45
Lot No. 3 in section 24, Grand island, T. 47, R. 19 W.	40.25
Acres.	1,416.80

108 At Presque Isle:

Frac. sec. 1 and lot No. 4 of sec. 2 on the mainland, T. 48, R. 25 W.		203.90
Lot No. 5 in section 3	Together with the islands in harbor, T. 48, R. 25 W.	40.30
Lot No. 3 in section 34	T. 49, R. 25 W.	2.10
Acres.		246.30

At Copper harbor:

		Acres.
Frac. sec. 27 and 28 on the mainland	T. 59, R. 28 W.	19.80
Lot. No. 1, section 33, ditto	On east cape of the harbor, T. 59, R. 28 W.	9.75
Lot No. 2, section 29,	T. 59, R. 28 W.	12.60
Lots Nos. 3 and 4 in sec. 32,	On Porters island— T. 59, R. 28 W.	5.10
Acres.		47.25

At Agate harbor:

		Acres.
Frac. sec. 25 on the N. cape of N. Agate bay.	T. 59, R. 30 W.... making 10 acres.	2.00
80 acres off the west end of lot 2, sec. 30.	T. 59, R. 29 W....	8.00
Frac. sec. 36 on the cape between N. — S. Agate bays.	T. 59, R. 29 W....	1.50
Acres.....		11.50

At Eagle harbor:

10 acres off the N. and of lot No. 2, sec. 6, on W. cape of harbor, T. 58, R. 30.....	10.00
Fract. of sec. 5 on E. cape of harbor, T. 58, R. 30.....	3.60
6.40 acres off the W. end of lot No. 3, sec. 32, on ditto, T. 59, R. 30.....	6.40
Acres.....	20.00
Aggregate acres.....	1,741.85

Reserved for light-house, see Comm'r's instructions.
To S. general June 14, '51.
To R. and R. June 16, '51.

At Grand Marais harbor:

5 acres off the E. cape of the harbor in lot 1.	Sec. 33.	
5 acres off the W. cape of the harbor in lot 2.	T. 59, R. 30 W...	10.00

109 At Portage river:

10 acres off the W. end of lot No. 2 of sec. 24, at entrance of the river, T. 53, R. 33 W.	10.00

At the mouth of Ontonagon river:

Lot No. 3 and the N. ½ of lot 7 of section 25, on the N. & S. capes of the river, T. 52, R. 40 W.....	39.52

At the mouth of Montreal river:

Lot No. 2 of section 10, on the N. cape of the river, T. 48, R. 9 W.	40.85
Making in aggregate acres	1,842.22

Let all the lands described in the above list and designated by the green shades on the annexed map, be reserved for light-house purposes; and all the remaining lands situated in the tracts which were temporarily reserved for "public uses" in the year 1847

(except the military reservation at Fort Brady) be and the same are hereby released from reservation.

By the President, MILLARD FILLMORE.

Washington, December 9th, 1852.

Lot No. 3 containing 16.19 acres, on east side of mouth of Octonagon river was released from reservation by order of the President dated 18th March, 1853, endorsed on letter by the Secretary of the Interior of that date B. 40.382.

LAND OFFICE, SAULT STE. MARIE, *December* 24, 1852.

SIR: In order to define, on our map of the village of Sault Ste. Marie, the precise limits of the military reservation of Fort Brady, we find it necessary to refer to your department on the subject.

110 Annexed is a tracing of a portion of the map transmitted to this office on the 21st of October last, accompanying instructions in regard to the adjustment of land claims in this village, which tracing will show the relative situation of Fort Brady and a few of the claims in the vicinity.

"The letters X Y Z O show the extent of the reserve at Fort Brady as set forth by the Secretary of War in his letter to the Commissioner of the General Land Office, dated 5th August, 1852."

The figures 1 2 3 4 show the pickets of the fort.

The letters *a b*, show the line recommended by Col. Abert as the west line of fort reservation 200 feet west of the pickets.

As we have no means of knowing the courses and distances of the lines X Y Z O we are unable to lay down these lines on our map. The Secretary of War in his communication, above referred to, recommends "that all the vacant space around the fort included within the given limits X Y Z O be retained," and we are instructed not to act upon claims within the said lines.

In order to show the precise localities of the fort and some of the surrounding claims, we give distances on a few lines around the fort.

The red lines *c d e f g h i j* show the actual open or vacant space around the fort, including the field and cemetery south of and opposite the fort; between this field and the fort runs the principal street or Portage street. North of Portage street and east of the pickets is an open or vacant space of seventy-two (72) feet in width; then comes the first claim east of the fort, which is a lot extending back parallel with the east line of the pickets eighty-nine (89) feet in width.

The next claim filed to the east is of a similar description forty-seven (47) feet in width; the third claim of the same dimensions as the second or forty-seven (47) feet in width.

Inquiry 1. Does the east line of the fort reservation or X
111 Y include more than seventy-two (72) feet of vacant space east of the pickets, if so, how far east of the pickets shall said line be run? The line X Y does not apparently take in all of the seventy-two feet of vacant space.

The line *a b* is two hundred (200) feet west of the west line of the pickets; the vacant space extends beyond this line west one hundred and sixteen (116) feet or three hundred and sixteen (316) feet west of the pickets to the red line *c d* on the Portage road and about four hundred and fifty (450) feet on the river. Col. Abert in his report and communication on this subject, to the Secretary of War, dated May 11th, 1852, and again June 17th, 1852, recommends the line *a b* as the west line of the fort reservation. The inspector general in a communication to the Secretary of War, dated July 14th, 1852, recommends that the limits of the fort on the west should be extended rather than diminished. Finally the Secretary of War in his communication to the Commissioner of the General Land Office above referred to, dated August 5th, 1852, decides that "according to the report of the chief engineer and the letter of the inspector general, copies of which are herewith inclosed, the vacant space around the fort is already too restricted and ought not to be reduced. I shall be guided by this opinion and accordingly recommend that all the vacant space around the fort included within the given limits X Y Z O be retained."

Inquiry 2. Does the west line of the fort reservation Z O include more than the vacant space between the line 1 2, or the west line of the pickets and the red line *c d* north of Portage street and the red line *f g h* south of said street, if so how far west of said red line *c d* shall the line be placed? The red line if extended south of Portage street or to *e h* will take in a portion of the Baptist mission and one dock and warehouse on the river.

112 Next west of and adjoining the vacant space is a strip of claimed land, like those east of the fort, seventy-six (76) feet in width between the river and Portage street, on which lot or strip of land are filed five private claims. The next claim or the distance across it, west is one hundred and ninety-nine (199) feet in width. The line Z O as laid down on the map, would apparently run through this lot and through five buildings, including one large warehouse, one store, two dwellings and one barn.

All of the lots or claims west of the red line *c d* whiclr is the west line of the actual vacant space appear to be of the same character and on the same footing, and as no distance or courses are given of the lines X Y Z O but the space between this line and the west line of the pickets, is denominated vacant space it is contended by the claimants interested that the line Z O is the red line *c d* and the west line of the fort reservation.

The "garrison lands," as seen on the tracing, consists of a tract of land, situate about fifty rods east of the fort of ten hundred and twenty-seven (1,027) feet in width, extending like the other lots back from the river to vacant or wild lands.

Inquiry 3. Shall the "garrison lands" be reserved for the uses of Fort Brady or shall they be divided into the "inlots" provided for under the act of Congress and the instructions from the Commissioner of the General Land Office, providing for the examination and adjustment of land claims in the village of Sault Ste. Marie?

About a mile south of the village are two cleared fields for which

claims have been filed but which are not lived upon by claimants and they are disconnected from the village and other claims; they run diagonally in and include portions of four quarter sections of land according to the public surveys.

Inquiry 4. Should such claims be acted upon?

We are proceeding with the examination of the claims as
113 fast as possible, having received testimony in more than half the cases; and we shall be prepared, on receiving instructions on the above points or inquiries, to close up the surveys at once and forward our maps and abstracts; it is of very great importance that we receive instructions at the earliest day possible.

Very respectfully, your ob't servants,

J. VENEN BROWN, *Receiver.*
RICHARD BUTTLER, *Register.*

Hon. John Wilson, Com. Gen. Land Office, Washington, D. C.

P. S.—Letters will reach us in much the shortest time directed (during winter): Register and receiver, Sault Ste. Marie, via Toronto, Canada, west.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
WASHINGTON, *Feb. 10th*, 1853.

SIR: I have the honor to acknowledge your direction to report upon a letter from the Hon. the Secretary of the Department of the Interior of the 7th inst.

This letter speaks of an error in the Land Office map, and desires in consequence a revision of the former decision of the Secretary of War on this subject, to the end that the western limit of the Fort Brady reservation be made to coincide with the line *a b c d* of the Land Office map No. II attached to a report from this office of the 21st, last June, and one of the 11th May last.

114 On examining all the papers which accompanied the letter of the Secretary of the Interior, I do not see any adequate reason against adopting the line *a b c d* Land Office map No. II as the western limit of the Fort Brady reservation. Which opinion is strengthened by my personal knowledge of the ground, having been there in the summer of 1851.

Should this line be adopted, it is respectfully recommended, in order to prevent all future intrusions, that a fence be erected upon it.

Respectfully sir, your ob't serv't, I. I. ABERT,
Col. Corps T. E.

Hon. C. M. Conrad, Secretary of War.

WAR DEPARTMENT, WASHINGTON, *Feb.* 14, 1853.

SIR: In consequence of an alteration made by the General Land Office for the correction of an error in the map of the public lands adjacent to Fort Brady, at Sault Ste. Marie, Michigan, I have to request that the tract of land indicated on said map by the red lines M L N O may be reserved for the use of said post under the act

of September 26th, 1850, instead of the tract X Y Z O described in my letter of the 5th of August last upon this subject.

Very respectfully, your ob't servant,

C. M. CONRAD,
Secretary of War.

Hon. A. H. H. Stuart, Secretary of the Interior.

115 GENERAL LAND OFFICE, *Feb. 15th*, 1853.

Register and receiver, Sault Ste. Marie, Mich., via Toronto, Canada, west.

GENTLEMEN: I have to acknowledge the receipt of your communication of the 24th December last, which only reached this office on the 31st ultimo; on the subject of the boundaries of the military reservation at Fort Brady accompanied by a sketch illustrating its correction with the town and town lots with — it interferes, and suggesting that a modification be made of the western boundary of the reserve so as to obviate the difficulty, also requesting a copy of the survey of the lines of the fort reservation in order that you may be enabled to correct the same with the survey of the town.

In reply I have to state that it appears from the only plat of the reservation furnished to this office by the surveyor general at Detroit, dated 9th June, 1847, of which a copy was transmitted to your office, the survey purports to have been made by Lieut. G. C. Wescott and sent to the surveyor general's office by Brig. Gen'l H. Brady as stated by the surveyor general in his certificate appended to the map, but no copy of the map and field-notes of Wescott's survey are on file in this office, except a printed copy forming part of Doc. No. 221, 29th Cong. 2nd sess. (a copy of which is herewith transmitted marked No. 111) to which the attention of this office has just been called. This was the survey intended to be laid down at this office in connection with the town on the maps which were before the Secretary of War when the reservation of the lands within the limits X Y Z O was ordered by him on the 5th of August last, but which being laid down by protraction without the benefit of the information exhibited on this map No. 111, was it seems placed too far west, and thus produced the apparent conflict of the western boundary of the reservation with the town lots lying west of the Agnews' lots.

116 In order to correct this discrepancy the whole matter has again been laid before the Secretary of War with an explanatory letter from this office, bearing date the 7th instant, and he has approved of the Wescott survey as the true limits of the reserve. You will, therefore, in your action adhere to the Wescott line as it actually exists on the ground, as the true western boundary of the reserve and to all the lines of this survey as including the lands (figured X Y Z O see red letters on the accompanying map) actually intended to be designated and reserved by the Secretary of War and the instructions of this office.

The fields marked "Garrison lands" situated east of the fort

reservation, and within the limits of the town, will of course be surveyed into lots and be subject to sale.

As regards the two cleared fields, which you state are claimed, situated about one mile south of the village, and are disconnected from the village and other claims, they will fall within the lands shortly to be proclaimed and sold, as other public lands, and should not, therefore, in my opinion, be considered as embraced in the town plat.

Very respectfully, your ob't servant,

JOHN WILSON,
Commissioner.

GENERAL LAND OFFICE, *Febr'y 26th*, 1853.

To register and receiver, Sault Ste. Marie, Mich.

GENTLEMEN: I herewith transmit a copy marked B of certain tracts reserved for light-house purposes within your district by order of the President (see copy at foot of the list) bearing date 9th of December last.

117 I will thank you to have the tracts carefully designated on the plat and tract books in your office as reserved for light-house purposes, with reference by dates to the President's order, and this letter, and to withhold the same from sale or entry for any purpose whatever the above tracts will be specially excepted from the public sales in your district for which it is contemplated to prepare a proclamation very soon.

I am very respectfully, your ob't serv't,

JOHN WILSON,
Commissioner.

P. S.—You will perceive that the President's order releases all the balance of the reservation of 1847 (except the existing reserve for Fort Brady) and you will so note them in your tract books and plats.

J. WILSON,
Commissioner.

GENERAL LAND OFFICE, *9th June*, 1853.

Register and receiver, Sault Ste. Marie, Mich.

SIRS: In your abstract of declaration (unoffered lands) for the month of March last are the following:

No. 1. Asa Fowles, S. W. qr. 6, 47 N. 1 E.

No. 2. Redman Ryder, N. W. qr. S. E. qr. 47 N. 1 E.

These lands are within the reservation for Fort Brady, and are, in consequence, not liable to entry, by pre-emption or otherwise.

The reservation as made by order of the President of the United States, on the 2nd day of Sept. 1847, embraces sections 4, 5 and 6 of T. 47 N. R. 1 E., and sections 1 and 2 of T. 47 N. R. 1 W.

118 and your office was informed in letter of the 26th, Feb'y last, of the continuance of the reservation for Fort Brady, without however, designating the tracts under the impression that you had been previously advised in the matter, and the proper note

had been made upon your books and plats. I fear that this has not been done, from the fact of your receiving and reporting declaratory statements for a portion of the lands. If your books and plats are not marked with reference to this reservation, let it be forthwith done, and permit no more entries or locations within the reservation as made in 1847 and herein described.

Respectfully your ob't serv't, JOHN WILSON,
Commissioner.

Regulations in Reference to Appeals.

GENERAL LAND OFFICE, *January* 24, 1859.

The following regulations are established by authority of the Secretary of Interior, communicated to this office in his letter of 21st instant, in relation to appeals to his department proper, and will be observed and enforced from and after this date.

In every case when an appeal may hereafter be taken from the decision of this office, the party appealing, or his attorney, will be required to notify the office in writing of the points of exception to its action.

An opportunity will also be afforded to other parties interested in the case to be heard, if desired, and a reasonable time will be allowed.

All parties to such appeals will be required to file in this office all arguments and documents of whatever character, before the cases are submitted to the department, in order that they may be referred to and considered in our report to the secretary if deemed expedient.

119 In submitting cases on appeal particular care will be taken to state the question or questions at issue and the grounds of appeal, and the action of the department will be confined to those questions alone unless sufficient cause should appear for looking beyond them.

THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *February* 8, 1860.

Register and receiver, Marquette, Mich.

GENTLEMEN: Your letter of the 5th Dec. last, enclosing the papers in the pre-emption case No. 2592, of Byron B. Adsit is received.

Enclosed you have a copy of instructions sent to your office on the 9th June, 1853, and receipt of which was acknowledged on the 16th of that month.

You will report as early as practicable if said instructions were complied with, also if they have been superseded by subsequent instructions, if so when, and send up a copy of such subsequent instructions in which report you will refer to the date of this letter.

Respectfully yours, JOS. S. WILSON,
Acting Commissioner.

reservation, and within the limits of the town, will of course be surveyed into lots and be subject to sale.

As regards the two cleared fields, which you state are claimed, situated about one mile south of the village, and are disconnected from the village and other claims, they will fall within the lands shortly to be proclaimed and sold, as other public lands, and should not, therefore, in my opinion, be considered as embraced in the town plat.

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JOHN WILSON,
Commissioner.

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had been made upon your books and plats. I fear that this has not been done, from the fact of your receiving and reporting declaratory statements for a portion of the lands. If your books and plats are not marked with reference to this reservation, let it be forthwith done, and permit no more entries or locations within the reservation as made in 1847 and herein described.

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THOMAS A. HENDRICKS,
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You will report as early as practicable if said instructions were complied with, also if they have been superseded by subsequent instructions, if so when, and send up a copy of such subsequent instructions in which report you will refer to the date of this letter.

Respectfully yours, JOS. S. WILSON,
Acting Commissioner.

120 STATE OF MICHIGAN,
LAND OFFICE, MARQUETTE, *March 8th*, 1860.

SIR: Yours of the 8th, February last, referring to the pre-emption case of Byron B. Adsit, R. and R. No. 2592, and enclosing a copy of instructions of the date of June 9th, 1853, has been received.

The military reserve at Sault Ste. Marie originally included as you state, sections 4, 5 and 6 of T. 47, N. of R. 1 E., and section- 1 and 2 of township 47 north of range 1 west.

The act of Congress of September 26, 1850, providing for the settlement of private claims to land at Sault Ste. Marie, directed that the military reserve should be surveyed and designated under the directions of the Secretary of War, before the Commissioner (R. R.) could proceed to investigate the claims. This was done; and the limits of the reserve will be found in your office on the map of the private claims, which reduced the quantity of the reserve to somewhat about 40 acres.

A good portion of the private claims adjudicated and allowed by your office will be found within the sections referred to in your instructions of June 9th, 1853. We are not aware that any pre-emption conflicts with the military reserve.

We are, sir, very respectfully, your ob't servants,
PETER WHITE, *Register*.
EBENEZER WARNER, *Receiver*.

Hon. S. A. Smith, Commissioner of the General Land Office, Washington city, D. C.

121 GENERAL LAND OFFICE, *April 9th*, 1860.

Register and recorder, Marquette, Michigan.

GENTLEMEN: Your letter of the 8th ult. in the pre emption case of Byron B. Adsit, is received, the land claimed by him not being subject to pre-emption, his entry No. 2592, is cancelled.

You will note cancellation on your books and plats and notify him to make the usual application through your office, for the repayment of his purchase-money.

The last paragraph of the instructions of 9th June, 1853, a copy of which was sent you on the 8th February last, was as follows:

If your books and plats are not marked with reference to this reservation, let it be forthwith done. In my letters of the 8th February last, you were directed to report if the above had been complied with which you have not done.

Respectfully yours, JOS. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, 28 *June*, 1881.

The Commissioner of the General Land Office.

SIR: Referring to your report of yesterday on the letter of Secretary of War of the 14th instant, concerning a strip of land north of the St. Mary's Falls canal, Michigan, and between these and the

rapids, you are authorized temporarily to reserve said land from disposal as requested by the Secretary of War.

Very respectfully, T. I. KIRKWOOD, *Secretary.*

122 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 13th,* 1881.

Register and receiver, Marquette, Michigan.

GENTLEMEN: Under date of June 1st, last, the register transmitted the application of William Chandler to locate Porterfield scrip No. 122 for 40 acres on a tract of land forming a part of section 6, T. 47 N. R. 1 E., containing 9.10¾ acres. This tract lies north of the St. Mary's canal, and between said canal and the rapids of the St. Mary's river.

Said application was rejected by you, May 17, 1881, "for the reason that the land described appears to be within the corporate limits of the village of Sault Ste. Marie, and its disposal subject to the provisions of the act of Congress, approved September 26, 1850."

It appears that this application to locate Porterfield scrip, on the described land is opposed as follows: (1.) The said tract is claimed to lie within the organized or corporate limits of said village of Sault Ste. Marie, and that the proceeds of the sale thereof would be subject to the claims of the authorities of said village under the act of Sept. 26, 1850. (2.) The Commissioner of Indian Affairs has filed in this office certain papers setting forth that said land is now occupied by a band of Indians who still claim the land under the treaty of June 16, 1820 (7 Stats. 206). (3.) The War Department has requested that the land be reserved for the use of the Government and it has been so reserved.

In regard to the claim set up by the village of Sault Ste. Marie I find that the land in question is within the organized or corporate limits of said village, but said tract is not one of the "vacant lot or
123 lots in which a claim may be rejected," referred to in the 9th section of the act of September 26, 1850 (9 Stat. 469), and the proceeds of the sale of which lots the village would be entitled under the 10th section of the same act.

As to the Indian title to said land, it was extinguished by the act of the Indians themselves as per treaty of Aug. 2, 1855, with the Chippewas of Sault Ste. Marie, (11 Stats. 630.) The Commissioner of Indian Affairs in his letter of August 10th, last, to the Hon. Secretary of the Interior on the subjects admits that the Indians have no legitimate claim to continue "occupancy" of the land in question and states that "it is to be hoped that a way may be opened to enable them (the Indians) to continue in the emjoyment of" the privilege of remaining on said tract.

On June 6, last, Major G. Weitzel, of the corps of engineers, U. S. Army, communicated with the Hon. Secretary of War, with the view of having said tract and other lands set apart for the purpose of the canal aforesaid and to be used by the Government. June 14th following the War Department forwarded the letter of Major Weitzel to the Interior Department and the Hon. Secretary referred

120 STATE OF MICHIGAN,
LAND OFFICE, MARQUETTE, *March 8th*, 1860.

SIR: Yours of the 8th, February last, referring to the pre-emption case of Byron B. Adsit, R. and R. No. 2592, and enclosing a copy of instructions of the date of June 9th, 1853, has been received.

The military reserve at Sault Ste. Marie originally included as you state, sections 4, 5 and 6 of T. 47, N. of R. 1 E., and section- 1 and 2 of township 47 north of range 1 west.

The act of Congress of September 26, 1850, providing for the settlement of private claims to land at Sault Ste. Marie, directed that the military reserve should be surveyed and designated under the directions of the Secretary of War, before the Commissioner (R. R.) could proceed to investigate the claims. This was done; and the limits of the reserve will be found in your office on the map of the private claims, which reduced the quantity of the reserve to somewhat about 40 acres.

A good portion of the private claims adjudicated and allowed by your office will be found within the sections referred to in your instructions of June 9th, 1853. We are not aware that any pre-emption conflicts with the military reserve.

We are, sir, very respectfully, your ob't servants,
PETER WHITE, *Register*.
EBENEZER WARNER, *Receiver*.

Hon. S. A. Smith, Commissioner of the General Land Office, Washington city, D. C.

121 GENERAL LAND OFFICE, *April 9th*, 1860.

Register and recorder, Marquette, Michigan.

GENTLEMEN: Your letter of the 8th ult. in the pre-emption case of Byron B. Adsit, is received, the land claimed by him not being subject to pre-emption, his entry No. 2592, is cancelled.

You will note cancellation on your books and plats and notify him to make the usual application through your office, for the repayment of his purchase-money.

The last paragraph of the instructions of 9th June, 1853, a copy of which was sent you on the 8th February last, was as follows:

If your books and plats are not marked with reference to this reservation, let it be forthwith done. In my letters of the 8th February last, you were directed to report if the above had been complied with which you have not done.

Respectfully yours, JOS. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, 28 *June*, 1881.

The Commissioner of the General Land Office.

SIR: Referring to your report of yesterday on the letter of Secretary of War of the 14th instant, concerning a strip of land north of the St. Mary's Falls canal, Michigan, and between these and the

rapids, you are authorized temporarily to reserve said land from disposal as requested by the Secretary of War.

Very respectfully, T. I. KIRKWOOD, *Secretary.*

122 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct. 13th*, 1881.

Register and receiver, Marquette, Michigan.

GENTLEMEN: Under date of June 1st, last, the register transmitted the application of William Chandler to locate Porterfield scrip No. 122 for 40 acres on a tract of land forming a part of section 6, T. 47 N. R. 1 E., containing 9.10¾ acres. This tract lies north of the St. Mary's canal, and between said canal and the rapids of the St. Mary's river.

Said application was rejected by you, May 17, 1881, "for the reason that the land described appears to be within the corporate limits of the village of Sault Ste. Marie, and its disposal subject to the provisions of the act of Congress, approved September 26, 1850."

It appears that this application to locate Porterfield scrip, on the described land is opposed as follows: (1.) The said tract is claimed to lie within the organized or corporate limits of said village of Sault Ste. Marie, and that the proceeds of the sale thereof would be subject to the claims of the authorities of said village under the act of Sept. 26, 1850. (2.) The Commissioner of Indian Affairs has filed in this office certain papers setting forth that said land is now occupied by a band of Indians who still claim the land under the treaty of June 16, 1820 (7 Stats. 206). (3.) The War Department has requested that the land be reserved for the use of the Government and it has been so reserved.

In regard to the claim set up by the village of Sault Ste. Marie I find that the land in question is within the organized or corporate limits of said village, but said tract is not one of the "vacant lot or lots in which a claim may be rejected," referred to in the 9th
123 section of the act of September 26, 1850 (9 Stat. 469), and the proceeds of the sale of which lots the village would be entitled under the 10th section of the same act.

As to the Indian title to said land, it was extinguished by the act of the Indians themselves as per treaty of Aug. 2, 1855, with the Chippewas of Sault Ste. Marie, (11 Stats. 630.) The Commissioner of Indian Affairs in his letter of August 10th, last, to the Hon. Secretary of the Interior on the subjects admits that the Indians have no legitimate claim to continue "occupancy" of the land in question and states that "it is to be hoped that a way may be opened to enable them (the Indians) to continue in the enjoyment of" the privilege of remaining on said tract.

On June 6, last, Major G. Weitzel, of the corps of engineers, U. S. Army, communicated with the Hon. Secretary of War, with the view of having said tract and other lands set apart for the purpose of the canal aforesaid and to be used by the Government. June 14th following the War Department forwarded the letter of Major Weitzel to the Interior Department and the Hon. Secretary referred

the matter to this office. A report was made by the Commissioner on June 27th, to the effect that "no objection is known to this office to the making of the proposed reservation all rights of the Indians having been relinquished etc." No note of the application of Chandler had then been made on the tract books of this office.

Under date of June 28th, the Hon. Secretary advised this office as follows: "Referring to your report of yesterday on the letter of the Secretary of War of the 14th instant, concerning a strip of land north of the St. Mary's Falls canal, Michigan, and between there and the rapids, you are authorized temporarily to reserve said land from disposal, as requested by the Secretary of War." Your office was accordingly instructed under date of July 5th, to allow no entries or filings of "any kind" on the tract in question.

124 From the foregoing recital of facts I am of the opinion and so decide, that the location of said scrip, upon the fraction of land described, should be allowed for these reasons, viz: 1st. The village of Sault Ste. Marie is not entitled to the proceeds of the sale of said land, under the act of 1850, as at the date of the act the land was reserved and has since become public land, by the extinguishment of the Indian title in 1855. The fact that said land is within the organized or corporate limits of said village, will not prevent its location with said scrip and in this ruling I follow the decision of my predecessor of April 9, 1881, in the Seattle case which was based upon several departmental decisions. 2nd. It it clear that the Indian title has been extinguished, and that the tract in question is now public land. 3rd. The application to locate said scrip was made May 17th, 1881, three weeks prior to the date of the letter of Major Weitzel, asking for the reservation of said land, and five weeks prior to the order of the Hon. Secretary of the Interior, authorizing the reservation to be made.

Give due notice of this decision and allow sixty days from the date of your notice for appeal. Advise the authorities of the village of Sault Ste. Marie, and this office will properly notify the Hon. Secretary of War and the Hon. Commissioner of Indian affairs of the ruling herein made.

Notify this office of the action taken in this case, and refer to this as G. by date.

Respectfully,

N. C. McFARLAND,
Commissioner.

125 UNITED STATES ENGINEER OFFICE,
25 WASHINGTON AVENUE,
DETROIT, MICH., *Jan'y* 3, 1882.

Brig. Gen'l H. G. Wright, chief of engineers, U. S. A., Washington, D. C.

GENERAL: Referring to my letter of June 6, 1881, relative to the reservation for canal purposes of certain public lands between the St. Mary's Falls canal, Michigan, and the rapids of the St. Mary's river, I have now the honor to report that I have just been informed from a source which I consider reliable that Mr. William P. Spald-

ing of Sault Ste. Marie, Michigan, holds a paid-up certificate for said lands by right of pre-emption.

This gentleman is a brother of Mr. John Spalding, who was superintendent of the canal under the State management and now holds the same position under the Government.

If this is true Mr. Spalding's right is before that of Mr. Chandler, and I therefore thought it my duty to make this report.

Very respectfully, your ob't serv't, G. WEITZEL,
Major of Engineers.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
WASHINGTON, D. C., *February* 12, 1883.

Hon. Robert T. Lincoln, Secretary of War.

SIR: I have the honor to submit the inclosed copy of a letter to this office dated February 3, 1883, from Major F. N. Farquhar, corps of engineers, relative to certain land located and claimed by
126 William Chandler under "Porterfield scrip" and lying north of the St. Mary's Falls canal grant, Michigan, containing approximately 9.10$\frac{3}{4}$ acres, and situated in the N. W. $\frac{1}{4}$ of section 6, township 47 N. (show- on accompanying map), which is required for use of canal referred to.

This land was not before withdrawn for the reason that it was in dispute (having been, as before stated, claimed by Mr. Chandler) and awaiting the decision of the Hon. Secretary of the Interior.

It being now stated that a decision has been reached, I beg to request that the matter be referred to the Department of the Interior with request, if, as it is represented, the decision of the Hon. the Secretary of the Interior be adverse to the location of the land in question under Porterfield scrip; that the necessary steps be taken to secure it to the United States for the purposes of the canal by proclamation of the President.

Very respectfully, your ob't servant,
H. G. WRIGHT,
Chief of Engineers, Brig. and Bt. Maj. Gen.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June 8th*, 1883.

The Commissioner of the General Land Office.

SIR: On the 31st day of January last I decided the case of William Chandler *vs.* The Village of Sault Ste. Marie, and communicated my decision to you by letter of that date.

On the 1st of February last a motion was made for a rehearing, alleging several grounds therefor; among others that the land in question is, and at the date of the Porterfield scrip location was, in fact, unappropriated and in a state of nature.

127 The evidence before me at the time of my said letter showed that the tract in question was occupied by some fifteen or twenty families of Indians of the Ottawa and Chippewa bands and that it had been so occupied by Indians from time immemorial, and I so found as a question of fact in my said decision.

Such evidence was found in the statement of Indian Agent Lee, contained in the record. This statement proved the fact *prima facie*, and as no issue had been made upon that question there was no contradictory evidence.

At such rehearing, however, a large number of affidavits made by persons of standing and character, and who have been long acquainted with the tract, were filed in the case. These affidavits clearly show that the land is, and for a long time has been, unoccupied, wild and unimproved, covered with bushes and large boulders, and in a state of nature. The tract in fact occupied by said Indians is proven to be distinct and separate from the one in controversy, being situated lower down the river, at the foot of the rapids, as shown upon the plat hereafter referred to.

The actual condition of the land would therefore present no obstacle to the location of Porterfield scrip thereon, and unless it was "otherwise appropriated at the time of such location."

The tract contains nine and ten and three-fourths one-hundredacres, and is a fractional part of sec. 6, t'p 47 N., R. 1 E., Marquette land office, Michigan, as appears by an official survey made in 1855.

Some time after Chandler applied to locate Porterfield scrip upon this tract, application was made to the Secretary of War to have it reserved for the use of the St. Mary's canal. This resulted in a reservation being made June 28, 1881, for that purpose.

128 The village of Sault Ste. Marie claims that the tract in question is subject to the provisions of the act of Sept. 26, 1850 (9 Stat., 469), and should be sold as a vacant lot under section 9 of that act, and the net amount of the sale be paid over to the authorities of said village to be expended in the improvement of streets and the erection of public buildings, as provided in section 10 of the act.

Said act, being "An act providing for the examination and settlement of claims for land at the Sault Ste. Marie, Mich.," directed (sec. 2) that the register and receiver should be furnished with a map upon a large scale upon which should be designated "the position and the extent of lots necessary for military purposes," and "also the position and extent of the Indian agency tract, and of the Indian reserve."

Section 7 of the act provided for a survey of the village into lots, and required a plat to be prepared exhibiting the exterior lines of the whole village, the squares and lots and "designating the lots reserved for military or other purposes." The plat prepared under this provision was given in evidence at the rehearing. The Indian reserve designated upon it is in three parcels, one of which is the tract in controversy.

By the treaty of June 16, 1820 (7 Stat., 206), the Chippewa tribe of Indians ceded to the United States sixteen square miles of land, including the tract in controversy. Article 3 of the treaty provided that "the United States will secure to the Indians a perpetual right of fishing at the Falls of St. Mary's, and also a place of

encampment upon the tract hereby ceded convenient to the fishing ground.

This right was reserved in the several treaties which followed (7 Stat., 419; 11 Stat., 621), until it was finally relinquished by the treaty of August 2, 1885 (11 Stat., 631), in the following language:

129 "The said Chippewa Indians surrendered to the United States the right of fishing at the Falls of St. Mary's, and of encampment convenient to the fishing ground, secured to them by the treaty of June 16, 1820."

Until the tract in question was so released it was appropriated for use and occupation ("encampment") of said Chippewa Indians.

At the time of the passage of the act of September 26, 1850, aforesaid, it had not been released, and therefore that act cannot be construed to embrace it. (Wilcox *vs.* Jackson, 13 Pet., 493.) When released by the treaty of August 2, 1855, aforesaid, it became public land, and was not subject to sale under the provisions of said act of September 26, 1850. (Railroad *vs.* United States, 92 U. S., 733.)

The tract in question having in this manner become public land, surveyed and not otherwise appropriated, it was subject to location by Porterfield scrip at the time such location was made.

The reservation for the use of the St. Mary's canal was made some time after the scrip location, and was therefore subject to such location.

The actual condition of the tract in controversy, as now proven, renders it beyond question subject to location by Porterfield scrip. I do not, therefore, consider it necessary or proper at this time to decide the question discussed at length at the rehearing, whether such scrip can properly be located upon occupied lands which have become valuable by improvement thereon, but which might in other respects be liable to location by that scrip. Such a decision being uncalled for by the facts of the case, would be dictum, and without binding force or value.

Your decision allowing the location of the Porterfield scrip upon the tract in question is therefore affirmed.

130 The decision contained in my said letter of Jan. 31, 1883, is hereby recalled.

The papers submitted with your letter of April 29, 1882, are herewith returned.

Very respectfully, H. M. TELLER, *Secretary.*

Vol. 3, No. 508, '82.

131 COMPT. EX. "C."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb.* 27, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed tracing of a part of a map entitled map of the village of Sault Ste. Marie, Mich., is a true and literal

exemplification of so much of said map as is shown on the tracing and now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

(Map above referred to is detached & sent with a roll of maps as exhibits in this case.

C. C. H.)

132 CERTIFICATE, COMPT. EX. "D."

STATE OF MICHIGAN, } ss:
Register's Office, Chippewa Co., }

This is to certify that I have compared the annexed copy of warrantee deed from Byron B. Adsit to William P. Spalding and recorded in Liber 3 of Deeds on page 257 with the original now remaining of record in this office, and that the same is a true and correct copy of such original and all of such original.

In testimony whereof I have hereunto set my hand and seal this 25th day of March, 1890.

[SEAL.] CHARLES H. CHAPMAN,
Register of Deeds.

COMPT. EX. "D."

Byron B. Adsit
to
William P. Spalding.

Received for record the 15th day of December, A. D. 1859, at 5 o'clock p. m.

C. W. HATCH,
Deputy Register.

This indenture made the fifteenth day of December in the year of our Lord one thousand eight hundred and fifty-nine, between Byron B. Adsit, of the township of Sault Ste. Marie, county of Chippewa and State of Michigan, of the first part, and William P. Spalding, of the same place, county and State aforesaid of the second part. Witnesseth that the said party of the first part in consideration of the sum of one hundred and ninety-two dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged *to* by these presents, grant, sell, release, remise and confirm unto the said party of the second
133 part and to him, his heirs and assigns forever all of the following-described lands, viz:

Lot 2, sec. 11, township 47 north of range 1 west, containing 28.30 acres; lots No. 3, sec. 11, township 47 north of R. 1 west, containing 19.65 acres, N. W. ¼ of S. W. ¼ of section 11, township 47 north of range 1 W. containing —, and E. ½ of N. E. ¼ of S. E. ¼ of

section 10, township 47 north of range 1 west, containing 60 acres in all, total, 107.95 acres.

Together with all and singular the heraditaments and appurtenances thereto belonging or in anywise appertaining to have and to hold the said premises as described with appurtenances unto the said party of the second part and to his heirs and assigns forever. And the said party of the first part for his heirs, executors, administrators does covenant, grant, bargain, and agree to and with the said party of the second part his heirs and assigns that at the time of ensealing and delivery of these presents he is well seized of the above-granted premises in fee-simple, that they are free from all incumbrances whatever. And that he will and his heirs, executors, administrators and assigns shall warrant and defend the same against all lawful claims whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal, the day and year first above written.

BYRON B. ADSIT. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHAS. W. HATCH.
H. G. LYON.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

On the fifteenth day of December, one thousand eight hundred and fifty-nine, before me a notary public for said county
134 personally came the above-named Byron B. Adsit known to me to be the person who executed the foregoing instrument and acknowledged the same to be his free act and deed.

CHAS. W. HATCH,
Notary Public.

Compl't's Ex. E is a map and is returned with other maps in the case, showing military reserve and Indian reserve.

135 COMPT. EX. "I."

STATE OF MICHIGAN, } ss:
Register's Office, Chippewa Co., }

This is to certify that I have compared the annexed copy of United States patent to William Chandler, dated December 15th, 1883, and recorded in Liber 9 of Deeds on page- 417–418 with the original now remaining of record in this office, and that the same is a true and correct copy of such original and all of such original.

In testimony whereof I have hereunto set my hand and seal, this 25th day of March, 1890.

[SEAL.]

CHAS. H. CHAPMAN,
Register of Deeds.

COMPT. EX. "I."

United States
to
William Chandler.

Received for record Feb. 29, A. D. 1884, 3 o'clock p. m.
GEO. W. BROWN, *Register.*

THE UNITED STATES OF AMERICA:

Special act of Congress, April 11th, 1860.

To all — whom these presents shall come, Greeting:

Whereas, in pursuance of the special act of Congress approved April 11th, 1860, entitled "An act for the relief of the legal representations of Charles Porterfield, deceased, there has been deposited in the General Land Office, warrant No. 123 for 40 acres in favor of William Kinney and Thomas J. Michie as executors of Robert Porterfield, deceased, or their assigns should any assignment from them as such executors under the provisions of the will of Robert Porterfield as directed by the act in question be duly endorsed thereon, and whereas, there is endorsed upon said warrant and assignment duly executed in favor of William Chandler with evidence that the same has been duly located upon all that certain lot or parcel of land being a portion of section numbered six in township numbered forty-seven north of range numbered one east of Michigan, meridian, in the State of Michigan, designated upon the official plat of the survey of the village of Sault Ste. Marie, made by United States Deputy Surveyor Thomas Whelpley, in 1854 and 1855, under and by virtue of an act of Congress, approved Sept. 26, 1850, entitled "An act providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan," which survey was approved by Lauder Chapman, United States surveyor general for the State of Michigan, Sept. 4, 1855, and is now on file in the office of the Commissioner of the General Land Office at Washington, D. C., as part of the Indian reservation, said tract being bounded by the River St. Mary's on the east, north and west and by the St. Mary's Falls canal and Portage street extended on the south, the same being more particularly described by courses and distance as follows, viz: Beginning at the intersection of the principal meridian of Michigan with River St. Mary being 90 links north of the St. Mary's canal and being the northwest corner of northeast part of claim No. 3, thence north 71 deg. 39 min. east 400 chains; thence north 4 deg. 37 min. W. 3.65 chains to the northwest corner of said tract the initial point of the survey of said tract; thence south 4 deg. 37 min. east 1 chain; thence south 77 deg. 10 min. west 15.00 chains; thence north 85 deg. 23 min. east 18.89 chains; thence north 18 deg. 39 min. west 2.06 chains; thence north 80 deg. 40 min. west 1.66 chains; thence south 88 deg. 15 min. west 4.01 chains; thence north 84 deg. 41 min. west 4.06 chains; thence

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south 85 deg. 23 min. west 3.00 chains; thence north 89 deg. 54
137 min. west 4.01 chains; thence south 79 deg. 58 min. west 4.02 chains; thence north 69 deg. 19 min. west, 4.42 chains; thence south 87 deg. 56 min. west, 8.09 chains to the initial point of survey, being the northwest corner of said tract containing 9.10¾ acres of land more or less in the district of lands subject to sale at Marquette, Michigan according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general. Now, know ye, that there is therefore granted by the United States unto the said William Chandler the tract of land above described to have and to hold the said tract of land to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the fifteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eight-.

By the President.

CHESTER A. ARTHUR,
By W. H. COOK, *Secretary.*

[Seal of Land Office.]

S. W. CLARK,
Receiver of the General Land Office.

Recorded vol. 6, pages 1, 2, and 3.

138 COMPT. EX. "F."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March 9th*, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed paper, pages one to seven inclusive is a copy of protest filed by one William P. Spalding against issuance of patent to William Chandler, for tract entitled "Indian reserve" in Marquette, Michigan, land district, and is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
[SEAL.] *Commissioner of the General Land Office.*

STATE OF MICHIGAN, }
County of Chippewa, } *ss:*

William P. Spalding of said county being duly sworn deposes and says that he is the owner of the register and receiver receipt issued at Marquette, Michigan, December 5th, A. D. 1859, to Byron B. Adsit, a copy of which is attached hereto and marked Exhibit "A" said receipt bearing number 2592.

That this deponent is the William P. Spalding mentioned and set forth in the quitclaim deed of said receipt and the land embraced herein from said Byron B. Adsit, a copy of which is hereto attached and marked Exhibit "B."

That the Exhibits "A" and "B" hereto attached and made a part hereof are true and perfect copies of the original thereof and that the sum of forty-five and $\frac{63}{100}$ dollars mentioned in
139 the annexed Exhibit "A" has never been received or repaid to this deponent nor to any one for him from the United States and that the same is now in possession of said United States.

And this deponent protests herein against the issuing by the United States any instrument of writing or patent or other evidence of title of the lands mentioned in said exhibits to any person or persons or corporation whatsoever. This deponent herein claiming the same under the pre-emption laws of 1841 of the United States of America.

And this deponent hereby most humbly prays that a patent do issue to him for the tract of land mentioned in said exhibits according to the tenor thereof.

WILLIAM P. SPALDING.

Subscribed and sworn before me this 23rd day of December, 1881.

E. S. B. SUTTON,

[SEAL.] *Judge of Probate Court, Chippewa Co., Michigan.*

To the Hon. Commissioner Gen. Land Office U. S., Washington, D. C.

EXHIBIT "A."

RECEIVER'S OFFICE AT MARQUETTE, MICH.,
December 5th, 1859.

Received from Byron B. Adsit of Chippewa county, Michigan, the sum of 45 dollars and 63 cents, being in full for the lot designated on the map of the U. S. survey, in the land office at Marquette, Michigan, as "Indian reserve" subject to all the provisions, requirements and conditions of an act of Congress entitled "An act granting to the State of Michigan the right of way and a donation
140 of public lands for the construction of a ship canal around the Falls of the St. Marie in said State," approved August 26, 1852, of section No. 6 in township No. 47, north of range No. 1 east, containing thirty-six (36) acres and fifty ($\frac{50}{100}$) hundredths at $1.25 per acre.

Pre-emption act 1841.

$45.63. EBENEZER WARNER, *Receiver.*

EXHIBIT "B."

Know all men by these presents, that I, Byron B. Adsit, of the township of Sault Ste. Marie, county of Chippewa and State of Michigan, for divers good causes and consideration thereunto moving, especially for the sum of one dollar, received to my full satisfaction

of William P. Spalding, of township of Sault Ste. Marie, county of Chippewa and State of Michigan aforesaid, have given, granted, remised, released and forever quitclaimed; and do by these presents absolutely give, grant, remise, release and forever quitclaim unto the said William P. Spalding and to his heirs and assigns forever all such right and title as I the said Byron B. Adsit have or ought to have in or to the following-described land situate in Sault Ste. Marie, section No. 6, township 47, north range in one east. Being lot designated on the map of the U. S. survey in the land office at Marquette, Michigan, as "Indian reserve" subject to all the provisions, requirements and conditions of an act of Congress entitled "An act granting to the State of Michigan the right of way and a donation of public lands for the construction of a ship canal around the Falls of the St. Marie in said State," approved August 26, 1852, of section No. (6) six, containing thirty-six ($\frac{5}{100}$) fifty-hundredths acres, more or less.

To have and to hold the premises aforesaid unto the said
141 William P. Spalding his heirs and assigns to the only use and behoof of the said William P. Spalding, his heirs and assigns forever so that neither I, the said Byron B. Adsit, nor my heirs nor any other person or persons claiming title through or under me shall or will hereafter claim or demand any right or title to the premises or any part thereof; but they and every one of them shall by these presents, be excluded and forever barred.

In witness whereof I have hereunto set my hand and seal the 7th day of August, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] BYRON B. ADSIT.

Signed, sealed and delivered in the presence of—
EBENEZER WARNER.
W. F. CLITZ.

THE STATE OF MICHIGAN, } ss:
County of Chippewa, }

Personally appeared Byron B. Adsit, who acknowledged that he did sign and seal the foregoing instrument and that the same is his free act and deed, and that he is still satisfied therewith.

EBENEZER WARNER,
Justice of the Peace.

August 7, 1860.

142 COMPT. EX. "G."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan. 18th*, 1882.

William P. Spalding, Esq., Sault Ste. Marie, Mich.

SIR: Referring to your letter of the 23 ult., transmitting a protest against the issuance of a patent on a Marquette, Mich., cash entry No. 2592, for lot designated on the map of the United States survey

in the land office at Marquette, as "Indian reserve," in sec. 6, t'p 47 N. range 1 east containing 36.50 acres made by Byron B. Adsit, Dec. 5th, 1859. You are informed that said entry No. 2592 was cancelled by our letter addressed to the register and receiver at Marquette, under date of April 9th, 1860, for the reason that the land described in said entry was not subject to pre-emption.

Upon the proper party making application to this office, through the register and receiver at Marquette, the purchase-money may be refunded.

I enclose herewith a blank form of application and circular of instruction relative to the return of purchase-money.

Very respectfully, N. C. McFARLAND,
Commissioner.

143 COMPT. EX. "A."

RECEIVER'S OFFICE AT MARQUETTE, MICH., *Dec. 5th*, 1859.

Received from Byron B. Adsit, of Chippewa county, Michigan, the sum of ($45) forty-five dollars and sixty-three cents; being in full for the lot designated on the map of the United States survey, in the land office at Marquette, Mich., as "Indian reserve," subject to all the provisions, requirements and conditions of an act of Congress, entitled, "An act granting to the State of Michigan the right of way and a donation of public lands for the construction of a ship canal around the Falls of the Ste. Marie in said State," approved August 26th, 1852, of section No. (6) six in township No. 47 north of range No. 1 east, containing (36) thirty-six acres, and fifty ($\frac{50}{100}$) hundredths, at $1.25 per acre. (Pre-emption act 1841.)

($45.63.) EBENEZER WARNER, *Receiver.*

144 COMP'T'S EX. "H."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 13th*, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed papers, pages one to ten inclusive, — copies of letters of Dec. 5th, 1859, from register at Marquette, Michigan, and the proof of Byron B. Adsit, cash entry 2592, enclosed, and are true and literal exemplifications of the originals now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. M. STOCKSLAGER,
[SEAL.] *Commissioner of the General Land Office.*

LAND OFFICE, MARQUETTE, *December 5th*, 1859.

SIR: We have examined the proofs in the pre-emption claim of Byron B. Adsit, to what is designated Indian reserve in section 6, t'p 47 north of range 1 east, containing 36.50 acres and find that the same was originally reserved for Indian purposes; that it was

surveyed in 1845 and the contents ascertained, as appears by our maps. That the Indian claim and title was extinguished by the treaty of August 2nd, 1855, for reference to which see "Statutes at Large and treaties of the United States of America commencing with the first session of the 34 Congress, 1855 and 1856," page 37 of treatise and which has since been complied with by the United States by payment to the Indians. And understanding this tract to be situate like all other surveyed lands, we have deemed
145 it subject to pre-emption. Subject, however, to the provisions of the act of Congress of August 26th, 1852, making provision of the construction of a ship canal around the Falls of St. Mary's, a part of which passes through this tract of land. We have endeavored to make suitable provisions for this grant and if we have not asked to be instructed what is necessary. We therefore recommend the allowance of the claim, considering the testimony sufficient and the character of the witness good.

Respectfully, your ob't servants,

PETER WHITE, *Register.*
EBENEZER WARNER, *Receiver.*

Commissioner of General Land Office, Washington, D. C.

Papers enclosed:
Affidavits of Byron B. Adsit.
" " C. C. Child.
" " W. F. Clitz.
Receiver's dup. receipt.
Register's certificate.

RECEIVER'S OFFICE AT MARQUETTE, *Dec. 5th*, 1859

Received from Byron B. Adsit of Chippewa county, Michigan, the sum of forty-five dollars and 63 cents; being in full for the lot designated on the map of the United States survey in the land office at Marquette, Michigan, as "Indian reserve," (subject to all the provisions, requirements and conditions of an act of Congress entitled, "An act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal
146 around the Falls of St. Maries, said sale approved August 26, 1852), in section No. six (6) township 47 north of range one east, containing thirty-six (36) acres and fifty (50) hundredths, at $1.25 per acre.

Pre-emption act of 1841.
$45.63. EBENEZER WARNER, *Receiver.*

Duplicate.

LAND OFFICE AT MARQUETTE, MICHIGAN,
December 5th, 1859.

It is hereby certified that, in pursuance of law, Byron B. Adsit in Chippewa county, State of Michigan, on this day purchased of the register of this office the lot designated on the map of the United States survey in the land office at Marquette, Michigan, as "Indian

reserve," subject to all the provisions, requirements and conditions of an act of Congress entitled an act granting to the State of Michigan the right of way and a donation of public lands for the construction of a ship canal around the Falls of Ste. Marie, in said State, approved August 26th, 1852, of section six (6) t'p 47 N. of range No. 1 east of the principal meridian, containing thirty-six and fifty-hundredths acres, at the rate of one dollar and twenty-five cents per acre, amounting to forty-five dollars and sixty-three cents, for which the said Byron B. Adsit has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Byron B. Adsit shall be entitled to receive a patent for the lot above described.

PETER WHITE, *Register.*

147 I, Byron B. Adsit of Chippewa county, Michigan, claiming the right of pre-emption under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights," approved September 4, 1841, to the lot designated on maps of the United States survey in the land office at Marquette, Michigan, as Indian reserve (subject to all the provisions, requirements and conditions of the act of Congress entitled "An act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal around the Falls of Ste. Mary's in said State), in section six (6), township 47 north of range 1 east, subject to sale at Marquette, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon or improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not directly or indirectly made any agreement or contract, in any way or manner, with any persons whatever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

(Signed) BYRON B. ADSIT.

I, Ebenezer Warner, receiver of the land office at Marquette, do hereby certify that the above affidavit was taken and subscribed before me this 5th day of Dec. A. D. 1859.

(Signed) EBENEZER WARNER, *Receiver.*

148 On this 10th day of October, A. D. 1859, personally came Charles C. Childs, of Sault Ste. Marie, in the county of Chippewa and State of Michigan, who being duly sworn declares and says that he is acquainted with Byron B. Adsit, of Sault Ste. Marie, in the county of Chippewa and State aforesaid, that said Byron B. Adsit is a citizen of the United States, over twenty-one years of age and a single man, that on the 10th day of September, 1859, the said Byron B. Adsit took possession of and commenced improvement upon the lot designated on the maps of the United States survey in

the land office at Marquette, Michigan, as "Indian reserve" in section 6, township 47 north of range one east, containing thirty-six $\frac{50}{100}$ acres of land be the same more or less. Said lands being in the t'p of Sault Ste. Marie, in the county of Chippewa and State of Michigan. That said Byron B. Adsit has also built upon the premises a comfortable house and removed into the same and makes the same his home, and has also planted a portion of the lands aforesaid. That he has good reason to believe and does verily believe that the said Byron B. Adsit intends to make the same his residence.

CHS. C. CHILDS.

Subscribed and sworn to before me this 10th day of Oct. 1859.

EBENEZER WARNER,
Receiver U. S. Land Office, Marquette, Michigan.

On this 10th day of October, 1859, personally came William F. Clitz, of Sault Ste. Marie, in the county of Chippewa and State of Michigan, who being duly sworn declares and says that he is acquainted with Byron B. Adsit, of Sault Ste. Marie, in the
149 county of Chippewa and State aforesaid, said Byron B. Adsit is a citizen of the United States, over twenty-one years of age and a single man; that on the 10th day of September, 1859, the said Byron B. Adsit took possession of and commenced improvements upon the lot designated on the maps of the United States survey in the land office in Marquette, Michigan, as "Indian reserve," in section 6, township 47 north of range 1 east containing 36.50 acres of land, be the same more or less. Said land being in the t'p of Sault Ste. Marie, in the county of Chippewa and State of Michigan. That said Byron B. Adsit has also built upon the premises a comfortable house and removed into the same and makes the same his home and place of residence; and has also platted a portion of the land aforesaid. That he has good reason to believe, and does verily believe that the said Byron B. Adsit intends to make the same his residence.

W. F. CLITZ.

Subscribed and sworn to before me this 10th day of Oct., 1859.

EBENEZER WARNER,
Receiver U. S. Land Office, Marquette, Michigan.

150 COMP. EX. J.

JAN. 10TH, 1874.

Board of supervisors of Chippewa county met pursuant to adjournment at the county clerk's office.

Present: P. S. Church, supervisor of Sugar Island township, and Guy H. Carleton, supervisor of Sault Ste. Marie township; Guy H. Carleton, county clerk.

* * * * * * *

In the matter of the application by petition to incorporate the village of Sault Ste. Marie, which having been duly presented, the

board of supervisors, after hearing all the parties interested therein, and being satisfied that all the requirements of the law respecting such application have been complied with and that the territory named in such application contained the population required by law, do order and declare that said territory shall be an incorporated village by the name specified in said application. And we do hereby appoint three inspectors of election to hold the first election, to wit: Peter B. Barbeau, Thomas McKnight and Guy H. Carleton, and we do hereby appoint the 2nd day of February, 1874, as the time when said first election shall be held, that said election shall be held at the court-house in the village of Sault Ste. Marie in said county.

Witness our hands and seals this 10th day of January, A. D. one thousand eight hundred and seventy-four, at Sault Ste. Marie in said county of Chippewa.

P. S. CHURCH, *Chairman.* [L. S.]
GUY H. CARLETON, *Supervisor.* [L. S.]

151 DEF. EX. 1.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *January 24th*, 1889.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals on file in this department.

In witness whereof I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.] HUGH S. THOMPSON,
Acting Secretary of the Treasury.

GENERAL LAND OFFICE, *March 31st*, 1847.

SIR: S. Pleasanton, Esq., Fifth Auditor, in a letter of the 5th instant, requests that reservation may be made of the lands at the following points for light-houses, to wit:

At Detour where the Sault Ste. Marie empties into Lake Huron, on both sides of the river. Fractional townships 41 north of ranges 4 and 5 E. Michigan it is believed, cover the points designated.

At Whitefiish Point on Lake Superior; embracing it is believed, fractional townships 50 and 51 N., of range 5 west of the Michigan meridian.

And at the Copper harbor, Fort Wilkins, Lake Superior, comprising fractional township 59 north of range 28 west, and sections 2, 3 and four of township 58 north of range 28 west.

It has been suggested, further, by Col. D. R. McNair, who has been in that region, in the employ of the Government, that the following are important points on the River St. Mary's, and
152 the southern shore of Lake Superior, within the land district recently established in the Northern peninsula of Michigan, to wit:

At the rapids of the Sault Ste. Marie, Grand island, head of

Kewawenan bay, mouth of Portage river, Copper harbor, Agate harbor, Eagle harbor, Ontonagon river and Montreal river. The points, it is believed, may be important to the Government either for the erection of necessary buildings for the use of officers of the Treasury, or for the defence of the coast, and therefore should be reserved till the necessary investigations can be made for that purpose. Should you concur with me in this opinion, I would respectfully request, that the President's order be obtained, for the reservation of so much of the lands designated by the Fifth Auditor, as may be necessary for light-house purposes, and that the points designated by Col. McNair with Presque Isle, be also reserved, or so much thereof as may be found necessary for Government purposes. The reservations proposed for light-house purposes, are colored "lake" on the accompanying diagram, the others "green."

With great respect your obedient servant,

RICHARD M. YOUNG,
Commissioner.

Hon. R. J. Walker, Secretary of the Treasury.

P. S.—The particular tracts covered by the points designated by Col. McNair, are: The north fractional half of fractional township forty-seven north of range 1 east, Grand island, Presque island, and the adjacent lands on the main-shore sections 32, 33, 34, 35, 36, in township 51 north of range 33 west; sections 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12 town. 50 north of range 33 west, sections 17, 18 and 19 town. 53 north of range 32 west; sections 13, 14, 23, 24, and 26 town. 53 north range 33 west; sections 1, 2, 3, 4, 5, 6, of town. 153 58 north and fractional township 59 north of range 30 west; sections 6 of town. 58 north and fractional sections 30 and 31 of fractional township 59 north of range 29 west; sections 25, 26, 35 and 36 town. 50 north range 40 west, and the land adjacent to the mouth of Montreal river.

TREASURY DEPARTMENT, *April 3rd*, 1847.

SIR: I have the honor herewith to submit a communication under date of the 31st ult. from the Commissioner of the General Land Office, recommending on the suggestion of the Fifth Auditor of the Treasury, the reservation from sale or entry of certain lands therein described, in the Northern peninsula of Michigan, for light-house purposes, and also a like reservation of certain other tracts of land in the same region (until the requisite investigation can be had) either for the erection of necessary buildings for the use of officers of the Treasury or for the defence of the coast.

I concur with the Commissioner in his recommendation and request that your sanction may be given to the proposed reservations, so that the necessary orders may be issued.

The diagram referred to by the Commissioner is also respectfully submitted.

I have the honor to be very respectfully,
Your obedient servant,

R. J. WALKER,
Secretary of the Treasury.

The President of the United States.

154 DEF. EX. 2.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 13th*, 1889.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed paper pages one and two is a copy of a letter from the acting Secretary of War to the Commissioner of the General Land Office, dated Aug. 25th, 1847, and is a true and literal exemplification of the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] S. M. STOCKSLAGER,
Commissioner of the General Land Office.

WAR DEPARTMENT, WASHINGTON, *August* 25, 1847.

SIR: I have the honor to enclose herewith reports from the adjutant general, the acting chief of the Engineer Bureau and the colonel of topographical engineers in relation to a tract of land adjacent to Fort Brady on the St. Mary's river, Michigan, required for military purposes, with a diagram showing the limits of the tract, and to request that you will cause to be reserved from sale the sections colored in red on the enclosed plat embracing sections 4, 5 and 6, of T. 47 range 1 E., and an additional tract adjoining the last-named section on the west not designated by number on the plat.

Please furnish this department with a copy of any order you may give on the subject.

Very respectfully your obedient servant,
J. Y. MASON,
Acting Secretary of War.

Hon. R. M. Young, Commissioner of Gen. Land Office.

155 DEF. EX. 3.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Jan.* 18, 1889.

I, T. J. Anderson, acting Commissioner of the General Land Office, do hereby certify that the annexed papers, pages one to thirty-three, inclusive, are copies of certain letters in relation to certain lands at Sault Ste. Marie in Michigan and are true and literal exemplifications of the originals on file and of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] T. J. ANDERSON,
Acting Commissioner of the General Land Office.

GENERAL LAND OFFICE, *July 19th*, 1847.

Lucius Lyon, Esq , sur. gen'l at Detroit, Mich.

SIR: The President of the United States, on the third April last, directed that the following reservation should be made, in the Northern peninsula of Michigan, for light-house purposes, to wit:

At Detour, where the Sault Ste. Marie empties into Lake Huron, on both sides of the river, embracing, it is believed, fractional townships 41 north of ranges 4 and 5 east.

At Whitefish Point, on Lake Superior, embracing, it is believed, fractional townships 50 and 51, north of range 5 west, of the Michigan meridian, and,

At Copper Harbor, Fort Wilkins, Lake Superior, comprising fractional township 59 north of range 28 west, and section- 2, and 4, of township 58 N. of range 28 west.

156 At the same time the President directed that the following reservations, or so much thereof as upon examination, may be found necessary should be made for public uses, as authorized by the act of the 1st March, 1847, to wit: The north fractional half of fractional township forty-seven north of range 1 east, Grand Isle, Presque Isle, and the adjacent lands, on the main *f*hore. Sections 32, 33, 34, 35 and 36, in township 51 north of range 33 west. Sections 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12, T. 50 north of range 33 west. Sections 17, 18 and 19, T. 53 N. of R. 32 west. Sections 13, 14, 23, 24, 26, T. 53 N. of range 33 west. Sections 1, 2, 3, 4, 5 and 6, township 58 north and fractional township 59 N. of range 30 west section 6 of T. 58 N., and fractional section- 30 and 31 of fractional township 59 north of range 29 west, sections 25, 26, 35, 36, township 50 north of range 40 west, and the land adjacent to the mouth of Montreal river.

You will please indicate these reservations on the plats before transmitting them to the land officers, with reference to this letter, and with the remark those officers will permit no sale or entry of any portion of the lands thus reserved, without specific instructions from the office to that effect.

Very respectfully your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

GENERAL LAND OFFICE, *August 27th*, 1847.

SIR: The acting Secretary of War, in a communication of the 25th instant, requested that fractional sections 4, 5 and 6 of town-

157 ship 47 north of range 1 east, and fractional sections 1 and 2 *of town* of township 47 north range 1 west, as colored in pink on the enclosed diagram,* should be reserved for the use of Fort Brady, at the Sault Ste. Marie in Michigan.

Fractional sections 4, 5 and 6, township 47 north, range 1 east were reserved for public uses, under the act of 1st March, 1847, with other lands, by order of the President of the United States, on the

* Diagram is returned with other maps. C. C. H.

3rd April, 1847; and I have now the honor to request that application be made to the President for an order of the reservation of fractional sections 1 and *and* 2 township 47 north range 1 west, under the same act for the use of Fort Brady as requested by the acting Secretary of War.

With great respects, your obedient servant,

RICHARD E. YOUNG,
Commissioner.

Hon. R. J. Walker, Secretary of the Treasury.

GENERAL LAND OFFICE, *Sept.* 7, 1847.

Lucius Lyon, Esq., surveyor general, Detroit, Mich.

SIR: The President of the United States on the 2nd inst., directed that fractional sections 1 and 2 township 47 N. R. 1 W. should be reserved for the use of Fort Brady under the act of 1st March, 1847, and you will please so mark the lands, with a reference on the margin of the plat to the date of the President's order, and of this letter as instructed on the 19th July last. Fractional sections 4, 5 and 6 T. 47 N. R. 1 W. which with other lands were directed to be reserved for public uses on the 3rd April last, by the President as you were advised on the 19th July last are also wanted for the use of Fort Brady as appears from the letter from the acting Secretary of War of the 25th ult., and you will please so note them.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

158 GENERAL LAND OFFICE, *August 14th*, 1851.

Register and receiver, Sault Ste. Marie, Michigan.

GENTLEMEN: I transmit you herewith a map on a large scale of the lines of the public surveys at Sault Ste. Marie as required by the act of 26th September, 1850.

The proper officers on your application will designate or cause to be designated upon the map the position and extent of the lots necessary for military purposes, their position and extent of any other lot or lots which may be required for other public purposes, and also the position and extent of the Indian agency tract and of the Indian reserve. After the lands to be reserved are thus designated you will examine and report upon the residue in accordance with the following instructions:

You will give public notice for two weeks that you will receive and consider the testimony that may be presented in support of claims to lots at the Sault.

The law requires that these claims should be divided into four classes. Primarily, however, they will only be divided into two, that is those under the 3rd and those under the 4th sections of the act; the former being marked A and the latter B. The former will consist exclusively of the claims of the present *bona fide* claimants or their legal representatives who hold under the original claims, which are entered in Book No. Seven of the report of the board of

commissioners under the act of 21st February, 1823. The latter those who having no such right had on the 1st Jan. 1849, reduced a lot into possession, and was at the passage of the act an actual *bona fide* settler thereon or occupant thereof.

You will require each of the claimants in class A to present a notice in writing, setting forth the nature of the claim the front and depth necessary to embrace his settlement and improvements, and its position and limits as accurately as practicable. A
159 like notice will be required of those in class B, stating the length of time the party has been in the actual possession of the lot, the nature of the improvements, the extent of front and depth requisite to embrace his actual settlement, improvements, the estimated value of the lot at the time of his settlement, and its present value exclusive of improvements, as also the value of such improvements and also designating as accurately as practicable its position upon the public surveys.

You will also receive any notice and evidence of any missionary claim from any party authorized to act both as to the nature and extent of the same and the grounds on which it may be entitled to equitable consideration.

All these notices of claims and statements in regard to them must be made under oath and supported by such further testimony as you may deem necessary to substantiate the facts and to enable you to determine in class A the precise nature of each claim or title to ascertain under whom the same originated and to fix its position and extent on the public surveys and its present value exclusive of improvements, also to ascertain the value of the improvements whether it interferes with any adverse claim, and the extent and nature of such interference. In class "B" the testimony should show the length of time the claimant has been in the actual possession of the lot, the nature of his improvements, the extent of front and improvements, the estimated value of the lot at the time of his settlement, depth requisite to embrace his actual settlement and its present value exclusive of improvements, as also the value of such improvements.

It should also show as accurately as practicable its position upon the public surveys. Similar evidence should be required in relation to any missionary claim that may be presented by persons duly authorized to act, as the nature and extent and locality of the same and the grounds on which it may be entitled to equitable consideration.

160 Cases of conflicts should be examined at a time and place specified after full notice to all parties, and to enable you to do this, the law has conferred on each of you the power of administering oaths or affirmations. It is also made your duty to record all notices and testimony in support of each claim. For administering oaths a fee of twelve and a half cents is allowed and a like sum for every hundred words of testimony which you may record and which must be paid by the claimants.

These fees the law requires shall be equally divided between you, and hence the labor must also be divided. In adjudicating these

claims you will in all cases of doubt or difficulty seek information from this office.

When you decide the cases you will arrange them as required by the act, that is those under the 3rd section which are allowed will be placed in abstract "A" first class, those under that class which may be rejected will be placed in abstract "A" second class.

Those cases contemplated by the fourth section which you may allow you will place in abstract " B " first class, and your rejections in abstract " B " second class.

In these abstracts you will designate the number of each claim, name of present and original claimant, area, present value of the lot exclusive of improvements, and the amount which in your opinion it would be just to require as a payment for the same to the Government, and you will also designate on the aforesaid map of the public surveys the location of each claim as near as it can be ascertained from the testimony with the estimated actual value and the assessment thereon of the sum which in your judgment should be paid for the same to the Government.

As soon as these claims have been examined by you and noted on the plat and abstracts as herein directed you will call on the surveyor general, at Detroit, to detail a skillful deputy to
161 survey and lay off the village. When the deputy reports himself and files his affidavit faithfully and partially to discharge his duties, you will deliver to him the said abstracts and map and he will proceed to survey and lay off the village of Sault Ste. Marie in accordance with instructions this day sent to the surveyor general.

When the survey has been completed the deputy will return you the abstracts and map and will submit to you his plat of the actual surveys and if you are satisfied that it is in accordance with your adjudications you will append a certificate to that effect and if on examination the surveyor general finds that the surveys have been correctly executed he will so certify and transmit one copy of the plat to your office, and another to this office.

You will send to this office also the original record of testimony with the abstracts and maps prepared under these instructions retaining a transcript for the files of your office.

In adjudicating these claims you will have regard to the policy manifested in special laws on similar subjects and in the general act of 1849, that is to secure to the actual and *bona fide* claimant at a reasonable price the land settled on and improved by him.

In all cases of interference the first settlement should govern all other things being equal.

The ordinary rules of equity, however, will govern you in deciding on the cases and in each you will give a synopsis of the merits of the case. Your opinion on it, and the reasons for that opinion.

After your adjudication on these cases have been received
162 here further instructions will be given. You will see the necessity and propriety of closing the examinations and adjudications in time to have the surveys made this fall so that a final

report may be made of the subject before the next session of Congress.

I am very respectfully your obedient servant,

J. BUTTERFIELD,
Commissioner.

GENERAL LAND OFFICE, *February 26th*, 1853.

To register and receiver, Sault Ste. Marie, Michigan.

GENTLEMEN: I herewith transmit a copy, marked "B" of certain tracts reserved for light-house purposes within your district by order of the President (see copy at foot of the list) bearing date the 9th of December last.

I will thank you to have the tracts carefully designated on the plat and tract books in your office as reserved for light-house purposes, with reference by dates to the President's order, and this letter, and to withhold the same from sale or entry for any purpose whatever.

The above tracts will be specially excepted from the public sales in your district for which it is contemplated to prepare a proclamation very soon.

I am very respectfully your obedient servant,

JOHN WILSON,
Commissioner.

P. S.—You will perceive that the President's order releases all the balance of the reservation of 1847 (except the existing reserve for Fort Brady) and you will so note them in your tract books and plats.

J. WILSON,
Commissioner.

163 GENERAL LAND OFFICE, *9th June*, 1853.

Register and receiver, Sault Ste. Marie, Michigan.

SIR: In your abstract of declarations (unoffered lands) for the month of March last are the following:

No. 1, Asa Fowles, S. W. qr. 6, 47 N. 1 E.

No. 2, Redman Ryder, N. W. qr. S. E. qr. 47 N. 1 E.

These lands are within the reservation for Fort Brady, and are, in consequence, not liable to entry, by pre-emption or otherwise.

The reservation, as made by order of the President of the United States, on the 2nd day of September, 1847, embraces: Sections 4, 5 and 6 of T. 47 N. R. 1 E. and sections 1 and 2 of T. 47 N. R. 1 W. and your office was informed, in letter of the 26th February last of the continuance of the reservation for Fort Brady, without, however, designating the tracts under the impression that you had been previously advised in the matter, and the proper notes had been made upon your books and plats. I fear that this has not been done, from the fact of your receiving and reporting declaratory statements, for a portion of the lands.

If your books and plats are not marked with reference to this reservation, let it be forthwith done, and permit no more entries

or locations within the reservation as made in 1847 and herein described.

Respectfully your obedient servant,

JOHN WILSON,
Commissioner.

164 *Report on the Settlement of Land Claims at Sault Ste. Marie.*

SIR: The undersigned register and receiver of the land office at Sault Ste. Marie, acting under the law of Congress, approved September 26th, 1850, entitled "An act providing for the examination and settlement of claims for land at Sault Ste Marie in Michigan," and agreeable to instructions from the Commissioner of the General Land Office, having completed our abstracts and map, herewith transmit the same for your final revision and determination.

As directed by said instructions, two weeks' public notice was given to claimants through a weekly newspaper published at said Sault Ste. Marie, that the undersigned would be prepared to receive at the office of the register of the land office at said village on the 20th day of November, A. D. 1852, testimony in support of their claims to lots in said village, and we thereupon after said date proceeded to receive, examine and arrange testimony offered in support of claims, and from said date to the present we have devoted our whole time to this business; and we may here remark that, as all the claimants, or their representatives, with but few exceptions, were present, and as it was a season of comparative leisure, both with the citizens and the register and receiver, the winter proved to be peculiary favorable for the examination and settlement of these claims, and notwithstanding the isolated situation of said village, and the difficulty in communicating with the same in winter it is confidently believed by the undersigned, after a careful examination of every class of claims, that the cause of no *bona fide* claimant has been in any way prejudiced on account of this peculiar situation.

Since the passage of said act in September, 1850, it has been known to claimants that testimony could be filed in support of their claims, and that the same should be prepared and ready to be acted upon at any time; and in almost every case
165 where claimants were not residing at said village, they have empowered agents and attorneys resident thereat to prosecute their claims.

For convenience of reference to particular subjects of our proceedings which may require explanation we will arrange the same under appropriate heads.

Reservations.

In accordance with the second section of said act, and the instructions, the military reservation of Fort Brady, according to "Westcott's survey," so called, the Indian reserve and Indian agency reserve and the Ste. Maries canal reservation of four hundred feet in width, as located by Cap. Canfield on the 14th of October, 1852,

acting under authority from the governor of Michigan, have been designated on the plat of the public survey of said village accompanying our abstracts, and our adjudications have been confined strictly to claim outside of said reservation, and in no instance have we confirmed claims, or any portion of the same, within said reservations.

Notice of Claim.

On examination the claims on file in our offices at the commencement of our proceedings, we found barely the sworn notices, as a general thing unaccompanied with testimony of any kind, and as these notices were drawn up by different claimants and parties, much irregularity was found in the arrangements of contents under the provisions of said act, and in our determinations and classifications we have been guided by the testimony as well as by the notice of claimants, and as to extent claimed, we found but very few cases where the extent of actual survey corresponded with the limits set forth in notices and in the testimony in support of the same.

Where bounds and extent have appeared well defined, mu-
166 tually understood and acknowledged by neighboring claimants, we have adopted and established the same with as little variation as possible, and where large tracts of land have been claimed we have been guided by the provisions of said act, and limited such to a front and depth necessary to embrace his actual settlement and improvements, and our adjudications have been made accordingly.

As the time had been extended by instructions from the Commissioner of the General Land Office, dated August 29, 1851, for receiving notices of claims "up to the time when it will be necessary to commence the survey of the town" we felt authorized to receive claims in accordance with said instructions in cases where claimants who had filed their claims had sold or otherwise disposed of their interest in the same and left the place: in cases of erroneous description:

And in cases where apparently *bona fide* claimants have delayed for good reasons in filing their claims.

Original Claims.

It will be noticed that but comparatively few claimants have filed their notices "under the original claims (sec. 3) which are entered in book number seven of the report of the board of commissioners, under the act of Congress approved 21st of February, eighteen hundred and twenty-three, entitled "An act to revive and continue in force certain acts for the adjustment of land claims in the Territory of Michigan." The bounds and extent of said original claims as recorded in the said book seven have not appeared to the undersigned to be sufficiently well defined or known at this time to be any safe criterion by which to be guided in locating the present claims, and not more than three of these said "original claims" have been located with any degree of certainty, as to extent of Ste.

Maries river and the public survey, while lots now claimed
167 and occupied on the shore of the said river and near the same which, from certain distances given in said original claims, must have come within the original limits of said claim confirmed under said board of commissioners in 1823 are shown by good testimony to have been first reduced to occupancy and possession, cleared, fenced and cultivated as late as the year 1845; and we have found it difficult in many cases to classify claims under the abstracts as appears to be contemplated by the said act of 1850, and we have arranged them according to the testimony offered and elicited in support of the claims without special regard to the supposed limits of the "original claims."

Transfer of Claims.

Until recently the great majority of the lots now claimed have been considered of comparatively little value and have been in numerous instances, as appears from testimony, occupied for a time and then abandoned for years, and afterwards reoccupied by other parties, and have been transposed from one to another oftentimes by verbal agreement and for trifling considerations and this will account for the imperfect, loose and illegal modes of transfer which have been produced as deeds for documentary testimony in support of claims; but in all cases we have endeavored, in our adjudications, to follow the true interest of the act and instructions which contemplate the securing to the actual and *bona fide* claimant, at a reasonable price, the land settled on and improved by him.

Streets and Public Squares.

As much as the appearance and convenience of the village seem to require it, we have not felt authorized to lay out new or widen *all* streets, or change the courses of old and establish- streets where they have materially conflicted with private claims, but outside of
168 the principal business portion of the village several streets of usual width have been located and surveyed, as well appeared from and on the plat of the village, and which will be an advantage both to the appearance and interests of the village as well as to the out and in lots, to be sold for the benefit of the town.

One public square of respectable size has been reserved and one public burying ground, the location and extent of which will be seen on the plat.

We would further state, in conclusion, that among the claims filed were found two in favor of missions: No. 1 in favor of Methodist E. mission; No. 2 in favor of Baptist mission. We have received all the testimony offered in support of each, which accompany the same, all of which *are* submitted for such other and further action in the premises as you may deem proper.

Very respectfully, your obedient servant-,

J. VENEN BROWN, *Receiver.*
RICHARD BUTLER, *Register.*

Sault Ste. Marie, Michigan, April 4, 1853.

Defendant's Exhibits 5 and 6 are maps and are plainly marked & returned with record in the case.

C. C. H.

169 DEF. EX. "4."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January 18th*, 1889.

I, T. J. Anderson, acting Commissioner of the General Land Office, do hereby certify that the annexed papers pages one to thirteen, inclusive are copies of the final proof and entry papers of Byron B. Adsit, Marquette, Michigan, pre-emption cash entry 2592 and the decision of this office cancelling the same, and that they are true and literal exemplifications of the originals on file and record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] T. J. ANDERSON,
Acting Commissioner of the General Land Office.

RECEIVER'S OFFICE AT MARQUETTE,
December 5th, 1859.

Received from Byron B. Adsit, Chippewa county, Michigan, the sum of forty-five dollars and sixty-three cents, being in full for the lot designated on the map of the United States survey in the land office at Marquette, Michigan, as "Indian reserve" (subject to all the provisions, requirements and conditions of an act of Congress entitled "An act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal around the Falls of Ste. Maries in said State, approved Aug. 26, 1852,) in sec. No. six (6) township 47, north of range (1) one east containing thirty-six (36) acres and (50) hundredths, at $1.25 per acre.

Pre-emption act of 1841.

$45.63.

EBENEZER WARNER, *Receiver.*

(Duplicate.)

170 LAND OFFICE AT MARQUETTE,
MICHIGAN, *December 5th*, 1859.

It is hereby certified that, in pursuance of law, Byron B. Adsit, residing in Chippewa county, State of Michigan, on this day purchased of the register of this office, the lot designated on the map of the United States survey in the land office at Marquette, Michigan, as "Indian reserve" subject to all the provisions, requirements and conditions of an act of Congress entitled An act granting to the State of Michigan the right of way and a donation of public lands for the construction of a ship canal around the Falls of the Ste. Marie, in said State, approved Aug. 26, 1852, of section (6) six, township 47,

north of range No. 1 east, containing thirty-six and fifty hundredths acres, at the rate of one dollar and twenty-five cents per acre, amounting to forty-five dollars and sixty-three cents, for which the said Byron B. Adsit has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said Byron B. Adsit shall be entitled to receive a patent for the lot above described.

PETER WHITE, *Register.*

I, Byron B. Adsit of Chippewa county, Michigan, claiming the right of pre-emption under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights;" approved September 4, 1841, to the lot designated on maps of the United States survey in the land office at Marquette, Michigan, as Indian reserve, (sub-
171 ject to all the provisions, requirements and conditions of the act of Congress entitled "An act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal around the Falls of Ste. Mary's in said State), in section six (6), township 47 north of range 1 east, subject to sale at Marquette, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon or improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not directly or indirectly made any agreement or contract, in any way or manner, with any persons whatever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

(Signed) BYRON B. ADSIT.

I, Ebenezer Warner, receiver of the land office at Marquette, do hereby certify that the above affidavit was taken and subscribed before me this 5th day of Dec. A. D. 1859.

(Signed) EBENEZER WARNER, *Receiver.*

On this 10th day of October, A. D. 1859, personally came Charles C. Childs, of Sault Ste. Marie, in the county of Chippewa and State of Michigan, who being duly sworn declares and says that he is acquainted with Byron B. Adsit, of Sault Ste. Marie, in the county of Chippewa and State aforesaid, that said Byron B. Adsit is a citizen of the United States over twenty-one years of age and a single man, that on the 10th day of September, 1859, the said Byron B.
172 Adsit took possession of and commenced improvement upon the lot designated on the maps of the United States survey in the land office at Marquette, Michigan, as "Indian reserve" in

section 6, township 47 north of range one east, containing thirty-six $\frac{50}{100}$ acres of land be the same more or less. Said lands being in the t'p of Sault Ste. Marie, in the county of Chippewa and State of Michigan. That said Byron B. Adsit has also built upon the premises a comfortable house and removed into the same and makes the same his home, and has also planted a portion of the lands aforesaid. That he has good reason to believe and does verily believe that the said Byron B. Adsit intends to make the same his residence.

CHS. C. CHILDS.

Subscribed and sworn to before me this 10th day of Oct., 1859.

EBENEZER WARNER,
Receiver U. S. Land Office, Marquette, Michigan.

On this 10th day of October, 1859, personally came William F. Clitz, of Sault Ste. Marie, in the county of Chippewa and State of Michigan, who being duly sworn declares and says that he is acquainted with Byron B. Adsit, of Sault Ste. Marie, in the county of Chippewa and State aforesaid, said Byron B. Adsit is a citizen of the United States, over twenty-one years of age and a single man; that on the 10th day of September, 1859, the said Byron B. Adsit took possession of and commenced improvements upon the lot designated on the maps of the United States survey in the land office in Marquette, Michigan, as "Indian reserve," in section 6, township 47 north of range 1 east containing 36.50 acres of land, be the same more or less.

Said land being in the t'p of Sault Ste. Marie in the county
173 of Chippewa and State of Michigan. That said Byron B. Adsit has also built upon the premises a comfortable house and removed into the same and makes the same his home and place of residence; and has also platted a portion of the land aforesaid. That he has good reason to believe, and does verily believe that the said Byron B. Adsit intends to make the same his residence.

W. F. CLITZ.

Subscribed and sworn to before me this 10th day of Oct., 1859.

EBENEZER WARNER,
Receiver U. S. Land Office, Marquette, Michigan.

GENERAL LAND OFFICE, *February* 8, 1860.

Register and receiver, Marquette, Michigan.

GENTLEMEN: Your letter of the 5th Dec. last, enclosing the papers in the pre-emption case No. 2592 of Byron B. Adsit is received.

Enclosed you have a copy of instruction sent to your office on the 9th June, 1853, the receipt of which was acknowledged on the 16th of that month.

You will report as early as practicable if said instructions were complied with, also if they have been superseded by subsequent instructions, if so when, and send up a copy of such subsequent instructions in which report you will refer to the date of this letter.

Respectfully yours, JOS. S. WILSON,
Acting Commissioner.

174 GENERAL LAND OFFICE, *April 9th*, 1860.

Register and receiver, Marquette, Michigan.

GENTLEMEN: Your letter of the 8th ult., in the pre-emption case of Byron B. Adsit is received, the land claimed by him not being subject to pre-emption his entry No. 2592 is cancelled.

You will note cancellation on your books and plats, and notify him to make the usual application through your office for the repayment of his purchase-money.

The last paragraph of the instructions of 9th June, 1853, a *a* copy of which was sent you on the 8th February last, was as follows:

"If your books and plats are not marked with reference to this reservation, let it be forthwith done." In my letter of the 8th February last, you were directed to report if the above had been complied with, which you have not done.

Respectfully yours, JOS. S. WILSON,
Commissioner.

And thereupon both parties rested their cause.

And because none of the testimony appears of record, the same having been taken in open court, therefore on the prayer of the complainant, he having made the aforesaid case, setting forth the evidence at large, I, Claudius B. Grant, the circuit judge before whom the same was tried, being attended by the counsel of both parties, having settled and signed the foregoing case, *and* certify that the same correctly sets forth the evidence at large produced by the respective parties before me on the trial of said cause, this 31st day of December, A. D. 1889.

C. B. GRANT,
Circuit Judge.

175 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the eleventh day of November, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, Edward Cahill, Charles D. Long, Claudius B. Grant, associate justices.

WILLIAM P. SPALDING, Complainant and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

This cause, coming on to be heard, is argued by counsel in part.

176 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the twelfth day of November, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable John W. Champlin, chief justice; Allen

B. Morse, Edward Cahill, Charles D. Long, Claudius B. Grant, associate justices.

WILLIAM P. SPALDING, Complainant and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

The argument heretofore commenced herein is concluded and the cause submitted.

177 *Opinion.*

Supreme Court of the State of Michigan.

WILLIAM P. SPALDING, Complainant and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

This controversy involves the title to a parcel of land near Sault Ste. Marie, in this State, a part of what was once termed the "Indian reserve." The complainant claims title under a pre-emption entry of one Byron B. Adsit. The proofs show that Adsit moved upon the land in 1856 or 1857, and built a house upon it, and raised some garden vegetables. He proved up his claim before the register and receiver of the land office at Marquette, and, December 5, 1859, received from these officers a certificate describing the land covered by his entry as follows: "Lot designated on map of the United States survey in the land office at Marquette, Mich., as 'Indian reserve,' subject to the provisions, requirements, and conditions of an act of Congress entitled 'An act granting to the State of Michigan the right of way, and a donation of the public lands, for the construction of a ship canal around the Falls of the Ste. Marie, in said State,' approved August 26, 1852, on section six, in township No. 47 north, of range No. 1 east, containing 36.50 acres, at $1.25 per acre." This certificate stated that, in pursuance of law, Adsit had, on that day, purchased the above-described premises, and would be entitled to a patent for the same, upon his presentation of such certificate to the General Land Office at Washington. He was also given a receipt for the money paid therefor. On the same day, the local land officers at Marquette wrote the Commissioner of the General Land Office, stating that they had examined Adsit's proofs of his pre-emption claim "to what is designated 'Indian reserve' in section six, township 47 north, of range one east, containing 36.50 acres, and find that the same was originally reserved for Indian purposes; that it was surveyed in 1845, and the contents ascertained, as appears by our maps; that the Indian claim and title was extinguished by the treaty of August 2, 1855, for reference to which, see Statutes at Large and treaties of the United States of America, commencing with the first session of the 34th Congress, 1855 & 1856, page 37 of treaties, and which has since been complied with by the United States by payment to the Indians." They recommended the allowance of Adsit's claim, considering the land subject to pre-emption and his proofs sufficient. To

this letter, the acting Commissioner, John Wilson, replied of date February 8, 1860, referring the Marquette officers to his instructions of June, 1853, in which they were informed that section 6, among other lands, was within the military reservation of Ft. Brady. They answered, and called the attention of the Commissioner to the act of Congress of September 26, 1850, and that, under such act, the military reserve had been reduced to about 40 acres, and did not include the lands in question, and referring him also to the map of private claims to be found in his office; and further stating that they knew of no reason why the land was not subject to pre-emption. April 9, 1860, Wilson again wrote them that the land claimed by Adsit not being subject to pre-emption, his entry was canceled, and directing them to note such cancellation on their books and plats, and to notify Adsit to make the usual application for the repayment to him of his purchase-money.

178 No further effort was made by Adsit, or any one in his behalf, to obtain a patent upon his certificate, and no appeal was taken from the action of the Commissioner. December 15, 1859, Adsit conveyed the land by quitclaim deed to the complainant. The defendant claims title under a patent from the United States dated December 15, 1883, issued to him, describing about 9.10¾ acres, which land is admitted to be within the limits of Adsit's pre-emption entry. The complainant filed this bill November 22, 1888, asking that the title to the land described in said patent be decreed to be his by the prior and paramount right of his pre-emption, and that Chandler be directed to make a proper conveyance of the fee to him. It is admitted that the fee remained in the United States, up to the issuing of the patent to Chandler, subject to the pre-emption right of complainant. The circuit judge, Hon. C. B. Grant, sitting in the circuit court for the county of Chippewa, dismissed the complainant's bill upon the proofs, from which decree the complainant appeals. The only right the complainant has is based upon the pre-emption of Adsit, and neither he nor the court is concerned with the title of Chandler, as complainant had no possession of the premises when Chandler entered under his patent, and occupied the land.

Several reasons are urged in this court why the land in question was not subject to pre-emption at the time Adsit made his entry, and proved his claim before the local land officers: First. It is claimed that it was an "Indian reserve," and, under the pre-emption law of 1841, by virtue of which Adsit made his entry, could not be pre-empted. Section 10 of said law of 1841, providing for the pre-emption of lands, contains the following provision: "No lands reserved for the support of the schools; nor the lands acquired by either of the last treaties with the Miami tribe of Indians, in the State of Indiana, or which may be acquired of the Wyandotte tribe of Indians, in the State of Ohio, or other Indian reservations to which the title has been extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any one of the States for the construction of any canal, railroad, or other

public improvement; no section, or fraction of sections, included in the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade, and not agriculture; and no lands on which are situated any known salines or mines,—shall be liable to entry under and by virtue of the provisions of this act." 5 U. S. St., 456. The undisputed history of this so-called "Indian reserve," at Sault Ste. Marie, of which this land was unquestionably a part, is as follows: June 16, 1820, the Chippewa Indians ceded to the United States 16 square miles of land, designated by metes and bounds, reserving, however, rights of fishing and encampment, which were guaranteed to them, as follows: "The United States will secure to the Indians a perpetual right of fishing, at the Falls of St. Mary, and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground, which claim shall not interfere with the defenses of any military work which may be erected, nor with any private right." 7 U. S. St., 206. March 28, 1836, the Ottawa and Chippewa nations ceded to the United States a large tract of country, including within its limits the 16 square miles above mentioned. By article 3 of this treaty, the rights of the Indians were preserved in the following words: "It is understood that the reservation for a place of fishing and encampment, made under the treaty of St. Mary's, of the 16th of June, 1820, remains unaffected by this treaty." 7 U. S. St., 492. July 31, 1855, the said tribes released and discharged the United States from all its obligations and liabilities under former treaties, and, in lieu thereof, accepted other grants and pay-
179 ments, exempting, however, from such relinquishments, the right of fishing and camping secured to them by the treaty of 1820. 11 U. S. St. 624. August 2, 1855, the said Chippewa Indians of Sault Ste. Marie relinquished to the United States, for a valuable consideration, all their interests in this land, as follows: "The said Chippewa Indians surrender to the United States the right of fishing at the Falls of Sault Ste. Marie, and an encampment convenient to the fishing grounds, secured to them by the treaty of June 16, 1820." The land claimed by Adsit under his pre-emption was surveyed by the United States as a reservation for the Indians, and, for a long time, was treated as such, and Indians resided thereon in wigwams and log houses, until removed by the Government. There is no doubt but this tract was set apart for the use of the Indians, and was used and occupied by the Chippewa Indians for encampment, under the reservation of 1820.

But it is claimed by the counsel for the complainant that, under the act of Congress of August 26, 1852, granting the right of way to the State of Michigan for the canal at Sault Ste. Marie, this land is termed and treated as a "military reserve," (see 1 Land Laws U. S. 1882, p. 218,) and that under the act for settling claims at the Sault Ste. Marie, passed in September, 1852, the military reserve was reduced to its present limits; that it is apparent, from the act of August 26, 1852, that, while this tract of 36.50 acres was devoted to the use of the Indians for fishing and camping, the appropriation

of the land for such purposes was but a temporary one, and the land was not regarded by the Government as an Indian reserve, as contemplated by the pre-emption law of 1841, but as a military reserve in connection with the uses of Ft. Brady; that, therefore, the land was subject to Adsit's entry. But the right given to these Indians by the treaty of 1820 was a "perpetual" one. There could be no stronger reservation. While the fee may have been vested in the United States of the whole of the 16 miles square when this so-called "Indian reserve" was set apart and appropriated to the use of these Indians for a place of encampment, the land certainly could not be used and occupied by any one else while they accepted and used it, and all the beneficial attributes and belongings of the fee was theirs, as far as any use of the same was concerned. And, after it was set apart by the Government, and accepted and occupied by the Indians, it is very doubtful if the United States could have changed the location of this reservation to some other point, without their consent. To have done so would have been a great moral wrong which only the doctrine that might makes right could have justified. But this was not attempted, and it remained such Indian reservation until it was relinquished by the apparently voluntary act of the Indians themselves. It cannot readily be seen that it differed in any material respect from other Indian reservations, except in this: that it was not in any sense lands that might be made available for agricultural purposes. It is undoubtedly true that this reservation was included in the lands through which a right of way was granted by the act of August 26, 1852, but the only reference in the act to it is as to the whole grant, which speaks of "the public lands known as the 'military reservation of the falls at St. Mary's river.'" This particular piece was at one time within the so-called "military reservation," or at least surrounded by it, but this did not alter its character, or take away or destroy the Indian reservation, or the rights of the Indians to its use for the purposes for which it was set apart and reserved in the first place. And Congress by naming these lands as a "military reservation" in the act of August 26, 1852, or by any other legislation, directly or indirectly, could not destroy this Indian reservation, after it had been set apart to the Indians, and used by them under the treaty of 1820. This piece of land could only be
180 taken away from them, and deprived of its character as an Indian reservation, by its voluntary cession to the United States, by the Indians themselves. Railroad Co. *v.* U. S., 92 U. S. 733–742, and cases cited.

The reason for the exemption of these lands, after the Indian title is extinguished, from pre-emption, is a good and substantial one, and in accord with the best public policy. The pre-emption law was a beneficent one, but it was not enacted for purposes of speculation, but to encourage actual and *bona fide* settlements upon the public lands. The reason is well stated by Mr. Justice Miller of the Supreme Court of the United States in Root *v.* Shields, 1 Woolw. at page 362, in speaking of the exemption from pre-emption of sections and fractions of sections included within the limits of any incorpo-

rated town: "Whenever a town springs up upon the public lands, adjoining lands appreciate in value. The reasons are obvious, and the fact is well known. * * * So, too, in respect to lands which have been reserved for the use of an Indian tribe when the Indian title is extinguished, the same may be said. While such lands are held in reserve, population flows up to their boundaries, and is there stayed. It, of course, grows more and more dense, so that, when the reserve is vacated, the lands have increased in value, and are always eagerly sought after." It would, no doubt, under such circumstances, not be in the interest of the Government, or of the whole people, to permit the pre-emption of these lands; nor yet the location of them by scrip, as was done by Chandler in this case. But, as before said, there need be no inquiry into Chandler's title here, if complainant's is not good. The Government saw fit, in the pre-emption act of 1841, to exempt Indian reservations, even after the Indian title was extinguished from the provisions of the act. If this land was not appropriated as an Indian reserve, under the treaty of 1820, at the time of the passage of the pre-emption law of 1841, it was certainly surveyed out and set apart as such as early as 1845, and it was, no doubt, used and treated as such before that time. But the act of 1841 covers all Indian reserves, whether set apart and designated as such before or after the passage of the act. It follows that Adsit could not pre-empt the land, and the complainant has no title to the premises. The decree of the court below is affirmed, with costs.

ALLEN B. MORSE.
JOHN W. CHAMPLIN.
EDWARD CAHILL.
CHARLES D. LONG.

Grant, J., did not sit.

(Endorsed:) Filed Dec. 24, 1890. Chas. C. Hopkins, clerk supreme court.

181 *Decree.*

At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the twenty-fourth day of December, in the year one thousand eight hundred and ninety.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, Edward Cahill, Charles D. Long, Claudius B. Grant, associate justices.

WILLIAM P. SPALDING, Complainant and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

This cause having been brought to this court by appeal from the circuit court for the county of Chippewa, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the

circuit court for the county of Chippewa, in chancery, dismissing the bill of complaint, be, and the same is hereby, in all things affirmed; and it is further ordered, adjudged, and decreed that the defendant do recover of and from the complainant his costs, to be taxed.

182 *Petition for Writ of Error.*

To the Honorable J. W. Champlin, chief justice and presiding judge of the supreme court of the State of Michigan:

Your petitioner, William P. Spalding, respectfully represents that he is the complainant and appellant in a cause heretofore determined in this court, wherein William Chandler was defendant and appellee, in which a final decree has been duly entered in this court.

Your petitioner further shows that the said suit was a cause in chancery to determine the validity of the title to certain lands in Chippewa county, in this State, in which a Federal question was involved and upon which said cause was determined.

That he desires to have the decree of this court reviewed by the Supreme Court of the United States, and he therefore prays this court to make an order allowing a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules of practice of the Supreme Court of the United States.

That a bond in the sum of five hundred dollars, executed by your petitioner, with sureties, may be approved as a good and sufficient bond as required in such proceedings.

And your petitioner will ever pray.

WM. P. SPALDING.

183 [Endorsed:] No. 1. 11413. Supreme court. Wm. P. Spalding *v.* Wm. Chandler. Petition for writ of error. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan.

184 *Order Allowing Writ of Error.*

Supreme Court of the State of Michigan.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

In this cause, application having been made to the Hon. J. W. Champlin, chief justice of the supreme court of the State of Michigan, that being the highest court of record in this State in which said cause could be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and of the rules of practice of the Supreme Court of the United States and for the fixing of the amount of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby,

allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond above referred to is hereby fixed at the sum of five hundred dollars, with two sureties.

JOHN W. CHAMPLIN,
Chief Justice of the Supreme Court of the State of Michigan.

185 [Endorsed:] No. 2. 11413. Supreme court. William P. Spaulding, compl't & appellant, *vs.* William Chandler, defendant. Order allowing writ of error to U. S. Sup. Court & fixing penalty of bond. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan.

186 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the decree of a plea which is in the said supreme court, before you or some of you, *between* William P. Spaulding was complainant and appellant and William Chandler was defendant, a manifest error hath happened, to the great damage of the said complainant and appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the eighteenth day of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 19th day of November, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—
JOHN W. CHAMPLIN,
Chief Justice.

187 [Endorsed:] No. 3. 11413. Supreme Court U. S. William P. Spaulding, pl'ff in error, *vs.* William Chandler, def't in error. Writ of error. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan. John C. Donnelly, attorney for pl'ff in error, Detroit, Mich.

circuit court for the county of Chippewa, in chancery, dismissing the bill of complaint, be, and the same is hereby, in all things affirmed; and it is further ordered, adjudged, and decreed that the defendant do recover of and from the complainant his costs, to be taxed.

182 *Petition for Writ of Error.*

To the Honorable J. W. Champlin, chief justice and presiding judge of the supreme court of the State of Michigan:

Your petitioner, William P. Spalding, respectfully represents that he is the complainant and appellant in a cause heretofore determined in this court, wherein William Chandler was defendant and appellee, in which a final decree has been duly entered in this court.

Your petitioner further shows that the said suit was a cause in chancery to determine the validity of the title to certain lands in Chippewa county, in this State, in which a Federal question was involved and upon which said cause was determined.

That he desires to have the decree of this court reviewed by the Supreme Court of the United States, and he therefore prays this court to make an order allowing a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and the rules of practice of the Supreme Court of the United States.

That a bond in the sum of five hundred dollars, executed by your petitioner, with sureties, may be approved as a good and sufficient bond as required in such proceedings.

And your petitioner will ever pray.

WM. P. SPALDING.

183 [Endorsed:] No. 1. 11413. Supreme court. Wm. P. Spalding *v.* Wm. Chandler. Petition for writ of error. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan.

184 *Order Allowing Writ of Error.*

Supreme Court of the State of Michigan.

WILLIAM P. SPALDING
vs.
WILLIAM CHANDLER.

In this cause, application having been made to the Hon. J. W. Champlin, chief justice of the supreme court of the State of Michigan, that being the highest court of record in this State in which said cause could be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review in accordance with the Constitution and laws of the United States and of the rules of practice of the Supreme Court of the United States and for the fixing of the amount of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby,

allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond above referred to is hereby fixed at the sum of five hundred dollars, with two sureties.

JOHN W. CHAMPLIN,
Chief Justice of the Supreme Court of the State of Michigan.

185 [Endorsed:] No. 2. 11413. Supreme court. William P. Spaulding, compl't & appellant, *vs.* William Chandler, defendant. Order allowing writ of error to U. S. Sup. Court & fixing penalty of bond. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan.

186 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the decree of a plea which is in the said supreme court, before you or some of you, *between* William P. Spaulding was complainant and appellant and William Chandler was defendant, a manifest error hath happened, to the great damage of the said complainant and appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the eighteenth day of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 19th day of November, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—
JOHN W. CHAMPLIN,
Chief Justice.

187 [Endorsed:] No. 3. 11413. Supreme Court U. S. William P. Spaulding, pl'ff in error, *vs.* William Chandler, def't in error. Writ of error. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan. John C. Donnelly, attorney for pl'ff in error, Detroit, Mich.

To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto annexed.

December 14, 1891.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

188 *Order for Return of Record.*

At a session of the supreme court of the State of Michigan, held at the supreme court room, in the city of Lansing, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

WILLIAM P. SPALDING, Compl't and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

In this cause, a writ of error having been duly allowed by the chief justice of this court to remove the same to the Supreme Court of the United States for review, and it appearing that the record herein has been returned to the register in chancery of the circuit court for the county of Chippewa, in chancery, as provided by law, it is ordered that said register in chancery forthwith transmit to the clerk of this court the original return, with all papers, pleadings, testimony, documents, & maps which were filed in this court on the appeal thereof, for the purpose of enabling the clerk of this court to make due and proper return to the Supreme Court of the United States, as required by said writ of error, and upon the completion of said return that said records be again remanded to the circuit court for the county of Chippewa, in chancery.

189 UNITED STATES OF AMERICA, *ss:*

The President of the United States to William Chandler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the eighteenth day of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein William P. Spaulding is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Champlin, chief justice of the supreme court of the State of Michigan, this 19th day of November, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of the Supreme Court of Michigan, Lansing.]

JOHN W. CHAMPLIN,
Chief Justice.

190 STATE OF MICHIGAN, } ss:
County of Chippewa, }

On this fifth day of December, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared Lawrence F. Bedford before me, the subscriber, a notary public in and for Chippewa county, Michigan, and makes oath that he delivered a true copy of the within citation to William Chandler, personally, at the Sault savings bank, Sault Ste. Marie, Michigan, on this fifth day of December, 1891.

LAWRENCE F. BEDFORD.

Sworn to and subscribed the 5th day of December, A. D. 1891.

[Notarial Seal, Chippewa Co., Mich.]

A. DONALDSON,
Notary Public, Chippewa County, Michigan.

[Endorsed:] No. 4. No. 11413. U. S. Supreme Court. William P. Spaulding, pl'ff in error, *v.* William Chandler, def't in error. Citation. Filed Dec. 8, 1891. Chas. C. Hopkins, clerk sup. c't of Mich. John C. Donnelly, attorney for pl'ff in error, Detroit, Mich.

191 Know all men by these presents that we, William P. Spalding, as principal, and James R. Ryan and David Brown, as sureties, of Chippewa county, Michigan, are held and firmly bound unto William Chandler, of the same place, in the just and full sum of five hundred dollars, to be paid to the said William Chandler, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this nineteenth day of November, A. D. 1891.

Whereas lately, in a suit depending in the supreme court of the State of Michigan, wherein said William P. Spalding was complainant and appellant and said William Chandler was defendant, a decree was rendered against said complainant and in favor of the said defendant, and the said complainant and appellant having obtained the allowance of a writ of error removing the said cause to the Supreme Court of the United States for review, to reverse the said decree, filed the same in the clerk's office of the said supreme court of the State of Michigan, and a citation directed to the said William Chandler, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington on the eighteenth day of December next:

Now, therefore, the condition of the above obligation is such that if the said William P. Spalding shall prosecute his said writ
192 of error to effect and answer all damages and costs if he fail to make his plea good, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) WM. P. SPALDING.
JAMES R. RYAN.
DAVID BROWN.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

James R. Ryan and David Brown, the sureties named in the foregoing obligation, being duly sworn, each for himself, deposes and says that he is a resident of the State of Michigan and is worth the sum of two thousand dollars over all just debts and liabilities in real estate subject to execution in said county of Chippewa.

JAMES R. RYAN.
DAVID BROWN.

Subscribed and sworn to before me this 14th day of November, A. D. 1891.

JNO. A. COLWELL,
U. S. Circuit Court Com'r.

The within bond is hereby approved and allowed.
Nov. 19, 1891.

JOHN W. CHAMPLIN,
Chief Justice of Supreme Court of Michigan.

Endorsed: Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court.

193 *Assignment of Errors.*

Supreme Court of the United States.

WILLIAM P. SPALDING, Plaintiff in Error, }
vs.
WILLIAM CHANDLER, Defendant in Error. }

And now comes the said plaintiff in error and makes and files the following assignment of errors in the decree, finding, record, and proceedings of the supreme court of the State of Michigan in said cause:

1. The said supreme court of the State of Michigan erred in holding and finding that the land in question and claimed by the plaintiff in error by right of pre-emption and as lawfully pre-empted by one Byron B. Adsit, through whom plaintiff in error claims title, was included within an Indian reservation to which the title had been extinguished by the United States during the operation of the pre-emption law of 1841, and that the same was not properly subject to pre-emption by said Byron B. Adsit or any other person, and that therefore the pre-emption thereof by the said Byron B. Adsit was invalid.

2. The said supreme court erred in holding and deciding that the Indian title to the land in question had not been extinguished by the United States by the provisions of the treaty of June 16th, 1820, between the Chippewa tribe of Indians and the United States, by the terms of which the said Chippewa tribe of Indians ceded to the United States sixteen square miles of land designated by metes and bounds and within which limits the lands involved in this suit were situated.

194 3. The said supreme court erred in holding and deciding that the Indian title to the lands involved in this suit had been extinguished by the United States during the operation of the pre-emption law of 1841 within the meaning of said pre-emption law.

4. The said supreme court erred in holding and deciding that the land in question in this suit was not properly subject to pre-emption at the time the said Byron B. Adsit pre-empted the same, and in holding that the same was set apart for the use of the Indians and was used and occupied by the Chippewa Indians for encampment and fishing, under the reservation or limitation contained in the treaty of 1820 with reference thereto, and in holding that the Indians had the exclusive right to occupy and use the same as an Indian reservation within the meaning of the pre-emption law, and in holding that the United States could not have changed the location of said Indians from said point to some other without their consent.

5. The said supreme court erred in affirming the decree of the court below, the circuit court for the county of Chippewa, in chancery, dismissing the bill of complaint of said plaintiff in error.

6. The said supreme court erred in holding and deciding that the lands in question were not properly subject to pre-emption and in refusing to grant to plaintiff in error herein the relief prayed for in his said bill of complaint.

7. The said supreme court erred in holding and deciding that plaintiff in error was not entitled to the relief prayed for in his bill of complaint.

JOHN C. DONNELLY,
Attorney for Pl'ff in Error.

Nov. 19, 1891.

195 [Endorsed:] 11413. Supreme Court of U. S. William P. Spaulding, pl'ff in error, *v.* William Chandler, def't in error. Assignment of errors. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan. John C. Donnelly, att'y for pl'ff in error.

196 *Calendar Entries.* 11413.

Parties.	Plaintiff's attorneys.	Defendant's attorneys.
William P. Spalding, complainant and appellant, *vs.* William Chandler, defendant.	Lawrence F. Bedford; Brennan & Donnelly, of counsel. Appeal from Chippewa, in chancery.	John H. Goff.

STATE OF MICHIGAN, } ss:
County of Chippewa, }

James R. Ryan and David Brown, the sureties named in the foregoing obligation, being duly sworn, each for himself, deposes and says that he is a resident of the State of Michigan and is worth the sum of two thousand dollars over all just debts and liabilities in real estate subject to execution in said county of Chippewa.

JAMES R. RYAN.
DAVID BROWN.

Subscribed and sworn to before me this 14th day of November, A. D. 1891.

JNO. A. COLWELL,
U. S. Circuit Court Com'r.

The within bond is hereby approved and allowed.
Nov. 19, 1891.

JOHN W. CHAMPLIN,
Chief Justice of Supreme Court of Michigan.

Endorsed: Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court.

193 *Assignment of Errors.*

Supreme Court of the United States.

WILLIAM P. SPALDING, Plaintiff in Error, }
vs.
WILLIAM CHANDLER, Defendant in Error. }

And now comes the said plaintiff in error and makes and files the following assignment of errors in the decree, finding, record, and proceedings of the supreme court of the State of Michigan in said cause:

1. The said supreme court of the State of Michigan erred in holding and finding that the land in question and claimed by the plaintiff in error by right of pre-emption and as lawfully pre-empted by one Byron B. Adsit, through whom plaintiff in error claims title, was included within an Indian reservation to which the title had been extinguished by the United States during the operation of the pre-emption law of 1841, and that the same was not properly subject to pre-emption by said Byron B. Adsit or any other person, and that therefore the pre-emption thereof by the said Byron B. Adsit was invalid.

2. The said supreme court erred in holding and deciding that the Indian title to the land in question had not been extinguished by the United States by the provisions of the treaty of June 16th, 1820, between the Chippewa tribe of Indians and the United States, by the terms of which the said Chippewa tribe of Indians ceded to the United States sixteen square miles of land designated by metes and bounds and within which limits the lands involved in this suit were situated.

194 3. The said supreme court erred in holding and deciding that the Indian title to the lands involved in this suit had been extinguished by the United States during the operation of the pre-emption law of 1841 within the meaning of said pre-emption law.

4. The said supreme court erred in holding and deciding that the land in question in this suit was not properly subject to pre-emption at the time the said Byron B. Adsit pre-empted the same, and in holding that the same was set apart for the use of the Indians and was used and occupied by the Chippewa Indians for encampment and fishing, under the reservation or limitation contained in the treaty of 1820 with reference thereto, and in holding that the Indians had the exclusive right to occupy and use the same as an Indian reservation within the meaning of the pre-emption law, and in holding that the United States could not have changed the location of said Indians from said point to some other without their consent.

5. The said supreme court erred in affirming the decree of the court below, the circuit court for the county of Chippewa, in chancery, dismissing the bill of complaint of said plaintiff in error.

6. The said supreme court erred in holding and deciding that the lands in question were not properly subject to pre-emption and in refusing to grant to plaintiff in error herein the relief prayed for in his said bill of complaint.

7. The said supreme court erred in holding and deciding that plaintiff in error was not entitled to the relief prayed for in his bill of complaint.

JOHN C. DONNELLY,
Attorney for Pl'ff in Error.

Nov. 19, 1891.

195 [Endorsed:] 11413. Supreme Court of U. S. William P. Spaulding, pl'ff in error, *v.* William Chandler, def't in error. Assignment of errors. Filed Nov. 19, 1891. Chas. C. Hopkins, clerk supreme court of Michigan. John C. Donnelly, att'y for pl'ff in error.

196 *Calendar Entries.* 11413.

Parties.	Plaintiff's attorneys.	Defendant's attorneys.
William P. Spalding, complainant and appellant, *vs.* William Chandler, defendant.	Lawrence F. Bedford; Brennan & Donnelly, of counsel. Appeal from Chippewa, in chancery.	John H. Goff.

Costs.	Journal.	Date.	Proceedings.
		1890.	
$6	.....	July 25	Proof of notice of appeal filed.
		" "	Record on appeal filed.
		Aug. 18	Note of argument filed.
	J, 396....	Nov. 11	Argued in part.
	" 401....	" 12	Concluded and submitted.
	" 477....	Dec. 24	Affirmed with costs.
		1891.	
		Jan. 20	Defendant's costs taxed at $69.00, less $6, clerk's fees, paid.
		Apr. 22	*Fi. fa.* to sheriff Chippewa Co., ret. July 6, 1891.
		June 23	Record remitted to court below.
		Nov. 19	Writ of error from Sup. C't U. S. allowed by Champlin, C. J., filed.
		" "	Order allowing writ filed.
		" "	Petition filed.
		" "	Assignment of errors Sup. C't U. S. filed.
		" "	Bond, duly approved, filed.
	K, 218...	" "	Order entered directing clerk below to return record.
		Dec. 3	Record returned from Chippewa circuit court.
		" 8	Citation, with proof of service, filed.
		" 14	Return made to Supreme Court U. S.

197 STATE OF MICHIGAN:

The Supreme Court.

WILLIAM P. SPALDING, Complainant and Appellant,
vs.
WILLIAM CHANDLER, Defendant.

STATE OF MICHIGAN, *In the Supreme Court,* } *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the above and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court as appears of record and on file in my office; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error with allowance endorsed thereon, the citation with proof of service, a copy of the bond to the adverse party filed with the writ of error, duly approved, and the assignment of errors by the plaintiff in error in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this fourteenth day of December, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

Endorsed on cover: Case No. 14,973. Michigan supreme court. Term No., 367. William P. Spalding, plaintiff in error, *vs.* William Chandler. Filed February 9, 1892.

Office Supreme Court
FILED
APR 26 189
JAMES H. McKENN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 367.

WILLIAM P. SPALDING,
Plaintiff in Error,
vs.
WILLIAM CHANDLER.

Brief of John C. Donnelly and A. C. Raymond, Counsel for Plaintiff in Error.

DETROIT:
John F. Eby & Co., Printers.
1895.

IN THE

Supreme Court of the United States.

WILLIAM P. SPALDING,
Plaintiff in Error,

vs.

WILLIAM CHANDLER.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

In 1856 Byron B. Adsit, complainant's grantor, settled upon the lot in controversy in this suit, and which had been surveyed as a fractional and anomalous legal subdivision within the limits of Section 6, Town 47 N., R. 1 E., containing $36\frac{50}{100}$ acres, in the township of Sault Ste. Marie, Chippewa county, State of Michigan.

On the 5th day of December, 1859, Adsit made the proofs required by law to complete his pre-emption, and obtained a receipt for the money paid therefor, and his pre-emption certificate duly signed by the Receiver of the Land Office.

Rec., p. 86.

This receiver's certificate was forwarded to the General Land Office, and its receipt acknowledged by the Commissioner, on February 8, 1860.

Rec., p. 75.

In which letter the Commissioner refers to his previous letter of June 9, 1853, which indicated that the tract in question had been reserved as a military reservation for the use of Fort Brady.

Rec., p. 75.

To this letter the Register and Receiver at Marquette made reply under date of March 8, 1860, in which they claimed that the tract in question was no longer a military reservation,

Rec., p. 76,

to which the Commissioner of the General Land Office at Washington replied, April 9, 1860, making no reference to the statements of the Register and Receiver, in the preceding letter, but peremptorily and arbitrarily ordered the cancellation of Adsit's certificate number 2592, giving no reason therefor, except that the land claimed was not subject to pre-emption, between which time and the patent to Chandler in 1883, the legal title to this tract remained in the United States.

Rec., p. 76.

August 7, 1860, said Adsit conveyed by deed all his right and title in the said tract of land to William P. Spaulding, the complainant and appellant.

Rec., p. 87.

In May, 1881, one William Chandler, of Michigan, made application to the General Land Office to locate Porterfield Scrip on a portion of the tract—said portion being in Section 6, Town 477 N., R. 1 E., containing 9–10 $\frac{8}{4}$ hundredths acres.

Rec., p. 77.

On December 15, 1883, a patent was issued by the United States to William Chandler for the above-named tract.

Rec., p. 84.

The purpose of this suit is to have said William Chandler declared to hold the title to said tract in trust for the use and

benefit of William P. Spalding, the plaintiff in error, and that said William Chandler may be ordered and decreed to execute and deliver to said Spalding a good and sufficient deed of conveyance of the land covered by said patent, viz., the easterly part of the tract known as the Indian Reserve, for the whole of which, Adsit obtained a receiver's certificate in 1859.

History of this Tract of Land.

This land was originally owned and occupied by the Chippewa Tribe of Indians with whom on June 16, 1820, the following treaty was concluded in behalf of the United States by Lewis Cass.

"Art. 1. The Chippewa Tribe of Indians cede to the United States the following tract of land beginning at the Big Rapid, in the River St. Mary's on the boundary line between the United States and the British Province of Upper Canada, and running thence down said river to the Little Rapid, and from these bounds running back from said river so as to include sixteen square miles of land.

Art. II. The Chippewa Tribe of Indians acknowledge to have received a quantity of goods in full satisfaction of the preceding cession.

Art. III. The United States will secure to the Indians a perpetual right of fishing at the falls of St. Mary's and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground, which place shall not interfere with the defenses of any military work which may be erected nor with any private rights.

Art. IV. This treaty, after the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, shall be obligatory upon the contracting parties."

7 Stats., 206.

In 1846 this land is referred to by Gen. Brady of the United States army by suggesting that all the lands fronting on the line of the canal (prospective) from the Fort Brady Reserve to the head of the Rapids should be reserved for military purposes.

See his letter to Adjt.-Gen. Jones, Rec., p. 61.

In this letter Gen. Brady refers to a map of Fort Brady made by Lieut. Westcott under his direction. This map was subsequently adopted by the Government in defining the limits of Fort Brady when they were finally ascertained in 1853, as will appear hereafter.

Subsequently, by order of the President, under date of April 3d, 1847, in accordance with General Brady's suggestion, sections 4, 5 and 6, Town 47 N., R. 1 E., were reserved for military purposes for the use of Fort Brady.

Still later in that year fractional sections 1 and 2, Town 47 N., R. 1 W., were reserved for the use of Fort Brady.

Rec., 63 and 74.

September 26, 1850, an act was passed by Congress "providing for the examination and settlement of claims for land at the Sault Ste. Marie in Michigan. Section 2 of that act reads:

"That the said Commissioner may cause the Register and Receiver to be furnished with a map on a large scale of the lines of the public surveys at the Sault Ste. Marie, and it shall be the duty of the Secretary of War to direct the proper military officer, on the application of the Register and Receiver, to designate, or cause to be designated upon the map aforesaid, the position and extent of lots necessary for military purposes, and also the position and extent of any other lot or lots which may be required for other public purposes, and also the position and extent of the Indian Agency tract and of the Indian Reserve."

The act of Congress of March 1st, 1847, creating the land district of the Northern Peninsula of Michigan, authorized the reservation by the President of such lands as were necessary for

"public uses." It was under this act that the Military Reservation above mentioned was created by the President, April 3d, 1847, and at the same time numerous other sections of land within this land district were reserved for lighthouse purposes. All of these lands reserved for lighthouse purposes, except those contained in the lists found on pages 68–69, Record, were, by order of the President, dated December 9, 1852, released from reservation as follows:

"Let all the lands described in the above list and designated by the green shades on the annexed map be reserved for lighthouse purposes, and all the remaining land set out in the tracts which were temporarily reserved for public uses in the year 1847 (except the military reservation at Fort Brady) be and the same are hereby released from reservation by the President.

MILLARD FILMORE.

WASHINGTON, Dec. 9, 1852."

It will be noted in this executive proclamation that the order excepts the military reservation *at* Fort Brady. In other words the exemption does not refer to the large tract originally reserved *for the use of Fort Brady*, but only to the lands constituting the Fort Brady Reserve—that is immediately adjacent to the Fort.

The precise limits of these adjacent lands comprising the military reservation at Fort Brady, as above mentioned, were not clearly defined, to overcome which difficulty a letter of inquiry, dated December 24, 1852,

Rec., p. 70.

was directed to the General Land Office by the register and receiver, at Marquette. The reply of the General Land Office to this communication, dated February 15, 1853, finally settled the true limits of the Fort Brady reserve, on the basis of Westcott's survey,

Rec., p. 73.

which, as will be noted by reference to the map, brought the limits of the Fort reserve entirely outside the limits of the tract

in controversy in this suit and nearly a half mile distant. This is confirmed by the report of the settlement of land claims at Sault Ste. Marie, of Brown and Butler, Receiver and Register, dated April 4, 1853, in accordance with the provisions of the act of September 26, 1850, providing for the examination and settlement of claims, etc, heretofore referred to. Reference to the Fort Brady Reservation is made as follows:

Rec., p. 100.

"In accordance with the second section of said act and instructions, the military reservation of Fort Brady according to Westcott's survey, so called, an Indian reserve and Indian agency reserve and the Ste. Marie Canal reservation of 400 feet in width as located by Capt. Canfield, on the 14th of October, 1852, acting under authority from the Governor of Michigan, have been designated on the plat of the public survey of said village accompanying our abstracts, and our adjudications have been confined strictly to claims outside of said reservations, and in no instance have we confirmed claims or any portion of the same within said reservations."

Since Westcott's survey for the reservation at Fort Brady did not cover any portion of the tract of land in dispute in this controversy, it is plain, that the Commissioner of the General Land Office in his letter of June 9th, 1853, was in error in rejecting the claims of Fowles and Rider in Section 47 N., R. 1 E., on the ground that the land covered by their declaratory statements was within the reservation for Fort Brady, and therefore not liable to entry by pre-emption or otherwise.

Rec., p. 99.

And for the same reason, the cancellation of the Adsit certificate was erroneous.

Pending the settlement of the claims of settlers to lands at the Sault Ste. Marie, under the act of September 26, 1850, and before the settlement was completed in 1853, the Congress of the

United States, under date of August 26, 1852, passed an act granting to the State of Michigan the right of way, and a donation of public lands for the construction of a ship canal around the Falls of St. Mary.

Section 1 of that act, is as follows: "That there be and is hereby granted to said State, the right of locating a canal *through the public lands* known as the military reservation of the Falls of St. Mary's river, in said State, and that 400 feet of land in width, extending along the line of such canal, be and the same is hereby granted to be used by said State or under the authority thereof, for the construction and convenience of such canal and appurtenances thereto, and the use thereof is hereby vested in said State forever, for the purposes aforesaid, and no other; provided, that in locating the line of said canal through said military reservation the same shall be located in the line of the survey heretofore made for that purpose, or such other route between the waters above and below said Falls, as under the approval of the Secretary of War may be selected."

The canal thus authorized was begun in the year 1852, and finished in the year 1855, and extended entirely across the so-called Indian Reserve, cutting it into three parts (bottom of page 55, Record).

In 1855 the Chippewa Indians surrendered to the United States (11 Stats., 631) the privileges conferred upon them by the treaty of 1820, the surrender being in the following terms:

"The said Chippewa Indians surrender to the United States the right of fishing at the Falls of Sault Ste. Marie, and of encampment convenient to the fishing grounds, secured to them by the treaty of June 16, 1820."

In 1856, Adsit, complainant's grantor, settled upon this tract. In 1859 a receiver's certificate was given to him and forwarded to the General Land Office at Washington. In 1860 his demand for a patent was refused. The same year he deeded the tract to plaintiff in error Spalding.

In 1881 William Chandler made application to locate Porter-

field Scrip upon this tract. December 23, 1881, William P. Spalding filed his protest in the General Land Office against issuing the patent to Chandler, and demanded one for himself under his previous claim of pre-emption.

Rec., p. 86.

January 18, 1882, the Land Commissioner overruled the protest of Spalding, declined his claim, and referred him curtly to the cancellation of his certificate in 1860, heretofore referred to.

Rec., p. 87.

December 15, 1883, patent was granted to Chandler.

Rec., p. 84.

November 22, 1888, Spaulding's bill of complaint was filed in the Circuit Court for the County of Chippewa—in Chancery.

Rec., p. 4.

March 12, 1889, case heard in open court.

Rec., p. 9.

October 18, 1889, bill of complaint was dismissed.

Rec., p. 12.

Case was appealed to the Supreme Court of the State of Michigan, in which the decree was filed December 24, 1890, affirming the decree of the court below.

Rec., p. 111.

Case comes into this court on writ of error directed to the Supreme Court of Michigan.

The following are the errors alleged:

1. The said Supreme Court of the State of Michigan erred in holding and finding that the land in question and claimed by the plaintiff in error by right of pre-emption, and as lawfully pre-empted by one Byron B. Adsit, through whom plaintiff in error claims title, was included within an Indian reservation, to which

the title had been extinguished by the United States during the operation of the pre-emption law of 1841, and that the same was not properly subject to pre-emption by said Byron B. Adsit or any other person, and that therefore the pre-emption thereof by the said Byron B. Adsit was invalid.

2. The said Supreme Court erred in holding and deciding that the Indian title to the land in question had not been extinguished by the United States by the provisions of the treaty of June 16, 1820, between the Chippewa tribe of Indians and the United States, by the terms of which the said Chippewa tribe of Indians ceded to the United States sixteen square miles of land designated by metes and bounds, and within which limits the lands involved in this suit were situated.

3. The said Supreme Court erred in holding and deciding that the Indian title to the lands involved in this suit had been extinguished by the United States during the operation of the pre-emption law of 1841, within the meaning of said pre-emption law.

4. The said Supreme Court erred in holding and deciding that the land in question in this suit was not properly subject to pre-emption at the time the said Byron B. Adsit pre-empted the same; and in holding that the same was set apart for the use of the Indians and used and occupied by the Chippewa Indians for encampment and fishing under the reservation or limitation contained in the treaty of 1820 with reference thereto, and in holding that the Indians had the exclusive right to occupy and use the same as an Indian reservation within the meaning of the pre-emption law, and in holding that the United States could not have changed the location of said Indians from said point to some other without their consent.

5. The said Supreme Court erred in affirming the decree of the court below, the Circuit Court for the county of Chippewa in chancery, dismissing the bill of complaint of said plaintiff in error.

6. The said Supreme Court erred in holding and deciding that

the lands in question were not properly subject to pre-emption and in refusing to grant to plaintiff in error herein the relief prayed for in his said bill of complaint.

7. The said Supreme Court erred in holding and deciding that plaintiff in error was not entitled to the relief prayed for in his bill of complaint.

Record, page 116.

ARGUMENT.

The substantial question in this suit is whether the treaty of June 2, 1820, created not a reservation of *rights*, but a reservation of *lands* to the Chippewas within the pre-emption law of 1841, the Indian title to which was extinguished by the United States during the operation of that act. Our contention is that the Indian title to these lands was extinguished in 1820, and that no legal reservation of these lands has ever been subsequently made except by the President in 1847 for the use of Fort Brady temporarily, which reservation was released by President Fillmore in 1852 (pages 69 and 70, Record), thus restoring these lands to the public domain, to be disposed of in accordance with law to pre-emptors or purchasers. Such disposition up to August 2, 1855, was of course always subject to the easement or privilege granted to the Indians in the form of "a perpetual right of fishing at the Falls of St. Mary's, and also a place of encampment upon the tract hereby ceded convenient to the fishing ground."

Subsequent to 1855 this tract of public land was open to settlement without being subject to the Indian easement. If the government itself, although the absolute and sole owner of "the tract hereby ceded" (in the language of the treaty) decided to erect military works on the tract, it would be subject to this easement, and the Indians would still be entitled to some other *place* on the tract ceded for fishing and encampment, if the one they were using was required for military works.

These propositions seem to us in exact accord with the closing paragraph of Art. 3 of this treaty as follows: "which place shall not interfere with the defences of any military work which may be erected, nor with any private rights."

These words clearly contemplate the supervening upon this land of future government use, for none existed there in 1820, and of future private use, for none appears of record to have been there in 1820. If this is not so, we are left to the absurdity of supposing that Lewis Cass created an Indian reservation of lands, and at same time provided for future private rights within it.

This granting by the United States of a privilege or easement on lands to which the Indian title had been extinguished by cession was a common practice. Treaty of August 24, 1818 (7 Stats., 176) with the Quapaws, contains the following in Art 3: "It is agreed between the United States and the said tribe or nation, that the individuals of the said tribe or nation shall be at liberty to hunt within the territory by them ceded to the United States, without hindrance or molestation so long as they demean themselves peaceably, and offer no injury or annoyance to any of the citizens of the United States, etc."

Surely no one would claim that granting this privilege created a reservation with a fresh Indian title, covering the very lands just ceded.

August 5, 1826 (7 Stats.,290). A privilege on Indian lands was granted to the United States, of searching for and carrying away minerals, "but this grant is not to affect the *title* of the land nor the existing jurisdiction over it" (Art. 3).

October 16, 1826. Treaty by Lewis Cass with the Pottawatamies (7 Stats., 297), Art. 7 says: "The Pottawatamie Indians shall enjoy the right of hunting upon any part of the land hereby ceded, as long as the same shall remain the property of the United States." Of course, while on hunting expeditions, the Indians must have encamped upon this land, but would any one

claim that this conferred an Indian title and created a reservation of lands?

October 23, 1826. Treaty with Miamies by Lewis Cass (7 Stats., 300). Art. 8 is in precise language of Art. 7, *supra*.

July 29, 1829. Treaty with Chippewas, Ottawas and Pottawatamies (7 Stats., 320). Same right of hunting secured upon the ceded lands, by Art. 7.

October 20, 1832. Treaty with Pottawatamies (7 Stats., 378). Right to hunt and fish secured on ceded lands while United States property (Art. 4).

February 14, 1833 (7 Stats., 417). United States granted a patent in fee simple to the Creeks for certain designated lands, but by Art. 7 of the treaty, it was agreed that "in case said lands should be found to include the saline or salt plains of the great prairies, the President should have the power to permit all other friendly Indians to visit said salt plains to procure and carry away sufficeint salt for their own use."

It must be absurd to suppose that the United States hereby created a second reservation for the friendly Indians, within the bounds of the first.

March 28, 1836 (7 Stats., 491). The Chippewas and Ottawas ceded a large portion of the present State of Michigan to the United States by treaty, Art. 13 of which is as follows: "The Indians stipulate for the right of hunting on the lands ceded with the other usual privileges of occupancy until the land is required for settlement."

Now, if this privilege created a reservation of and conferred an Indian title to these lands, they could not be open to settlement, and the whole cession was worthless, and Art. 13 was meaningless.

If the granting of these privileges did not create a reservation of lands and confer title in 1836, by what process of reasoning can it be claimed that similar privileges did confer title in 1820?

The part of section 10 of the law of 1841 (5 Stats., 456), applicable to this case describing lands which cannot be pre-empted,

reads as follows: "No lands included in any reservation by any treaty, law, or proclamation of the President of the United States or reserved for salines or other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States during the operation of this act."

We confidently assert that no legal Indian reservation was ever created, either by a reservation made by the Indians themselves out of ceded lands or granted out of the public domain by the Government, in which the amount of lands was not approximately stated and described by approximate boundaries. We have looked in vain for such a case and ask the appellee to point it out to us.

If any *lands* were set aside to the Chippewas in 1820, the fact must appear in Art. 3, of that treaty, and we cannot discover them there either in amount or by boundary.

Moreover, if any reservation was created by that treaty, which we deny, it arose from a *grant* by the United States, and was therefore a *Government* reservation for a certain purpose, and not properly speaking an Indian reservation, which implies withholding certain lands from those ceded.

If this, therefore, was a *Government* reservation for a certain purpose, that purpose ended by the treaty of August 2, 1855, and the land became public domain liable to pre-emption without any restriction as to the time it became such, viz., during the operation of the act of 1841, as in the case of an Indian reservation, and Adsit's right of pre-emption was perfect at the time he exercised it in 1859.

At the risk of repeating some of what has been already said, we desire to call the attention of the court more particularly to the details and terms of the treaties of July 31, 1855, and August 2,

1855, believing that in so doing we can demonstrate that no reservation of lands was made or contemplated by the treaty of 1820.

The treaties of July 31, 1855, and of August 2, 1855, prove by their own terms that no reservations of lands was made or contemplated by the treaty of 1820.

The treaty of July 31, 1855 (11 Stats., 621), withdrew from the unsold public lands in Michigan certain designated tracts, out of which (section 8 of Art. 1) of that treaty were to be selected a certain number of acres for a home for each Ottawa and Chippewa Indian, heads of families, single persons and orphan children. Thus every Indian had a permanent home; nevertheless by Art. 3 of this treaty, while these tribes, Ottawas and Chippewas, released the United States from all previous obligations of every kind, they still "excepted the right of fishing and encampment secured to the Chippewas of Sault Ste. Marie in 1820." It is plain that the Chippewas did not occupy this encampment tract for a home or dwelling place at this time, for every one of them was provided with a home or dwelling place upon other designated tracts of the unsold lands. They had no use as individuals for this tract in controversy, but the whole tribe desired to retain an avenue of approach to a fishery and the temporary use of the adjacent shore.

It is equally plain that the Indians never had occupied this tract as a home, because it was not mentioned in this treaty as a part of the land to be divided among them, nor was any disposition made of it, nor any reference made to it *as a tract*, which would have been a strange omission if, as claimed by our friends on the other side, it was at this time a regularly constituted Chippewa reservation.

Two days later, August 2, 1855, at the same place and by the same Commissioners, a treaty was negotiated with the Chippewa Indians (11 Stats., 631), Art. 1 of which reads as follows: "The said Chippewa Indians surrender to the United States the right of fishing at the falls of St. Mary's, and of encampment convenient to the fishing ground, secured to them by the treaty of June 16th,

1820." It will be noted that nothing is said about any *lands* being surrendered, or of their being possessed of any lands at this point, but two rights, viz., the right of fishing and the right of encampment. As the pre-emption law of 1841 relates only to *lands* acquired of an Indian reservation, and none were acquired by the terms of this treaty, and none have since been acquired from the Chippewas at Sault Ste. Marie, it must follow that the lands in this tract were acquired by the United States, if ever, in 1820, and were therefore subject to Adsit's pre-emption in 1859.

This contention is further confirmed by the terms of Art. 3 of this same treaty of August 2, 1855, which reads as follows: "The United States also gives to the Chief Oshawano, for his own use in fee simple, a small island in the River St. Mary's adjacent to the camping ground hereby surrendered, being the same island on which he is now encamped, said to contain less than half an acre. Provided, that the same has not been heretofore otherwise appropriated or disposed of, and in such case this *grant* is to be void, and no compensation is to be claimed by said chief or any of the Indians, parties hereto in lieu thereof." This place occupied by Shawano was within the lines of the Indian reserve, so called, as shown on the Whelpley map of 1850 (see Carleton's testimony, p. 49 of the Record). Now, if this place was already a part of an Indian reservation, and occupied as such by the chief of the tribe, the language of the treaty would not have been that of a *grant*, because that implies title elsewhere than in the Indians, but would have been in the oadinary form of reserving from ceded lands, this particular piece in fee simple. Furthermore, if this land was at this time, and had been since 1820, an Indian reservation, as claimed by the appellee, the proviso "that the same has not been heretofore otherwise appropriated or disposed of" would be utterly meaningless and absurd.

That there is a clear distinction between the ordinary reservation for permanent use, and under the usual Indian title, and a place for encampment for temporary use without a title to the

same, is clearly shown by Art. 3d, of the treaty of 1836, with these same Indians (7 Stats., 491), in which several designated and definite tracts of land are absolutely reserved to the Indians, and one tract called "Round Island as a place of encampment for the Indians, *to be under the charge of the Indian Department.*" That the Indians had no title to the latter tract, and no control over it, except under the orders of the Government, is too clear for argument.

This right is of precisely the same character as that given to the Indians in 1820, in the tract in controversy in this suit, and as no title to Round Island was intended to be given in 1836, so no title was given to the tract in controversy in 1820, and Adsit's pre-emption must be held good. This proposition is fully sustained in *U. S. vs. Sproule*, concerning the "Cherokee Outlet."

Under the treaties of 1828 and 1833, seven millions acres land were given by metes and bounds by the United States to the Cherokees for a home, and in addition thereto a certain other tract for a perpetual outlet west and a free and unmolested use of the country lying west of the western boundary of the above described limit, and as far west as the sovereignty of the United States and their right of soil extends."

Both tracts for the above purposes were conveyed to the Cherokees by patent from the United States in 1838. In *U. S. vs. Sproule*, the question arose, whether this outlet tract was Cherokee territory in the sense of being "set apart" and "occupied" by that nation. Mr. Justice Brewer, then judge of the Kansas district, held that it was not Cherokee territory in the above sense, saying: "Manifestly Congress set apart that 7,000,000 acres as a home. * * * Beyond that the guaranty was of an outlet, not territory for residence, but for passage ground over which the Cherokees might pass to all the unoccupied domains west. But while the exclusive right to this outlet was guaranteed, while patent was issued conveying this outlet, it was described and intended obviously as an outlet, and not as a home."

U. S. vs. Sproule, 30 Fed. R., 918.

This view of the relation of the Cherokees to this outlet, has subsequently been followed by the courts in cases arising from efforts of the government to drive intruders from the outlet, notably where parties, Cherokees and their licenses, opened extensive quarries of stone in the outlet, expended large sums in their plant and in building a railroad to it. Held, that the Indians held no title to the outlet in fee, but merely the right of passage.

Jordan vs. Goldman, 34 Pac., 371, 1 Oklahoma R.

That occupancy for hunting purposes does not create title to an Indian reservation, was also decided in *Buttz vs. Nor. Pac. R. R.*, 119 U. S., 55. The Northern Pacific Railroad claimed a certain tract of land under its land grant from the United States. At the time of pre-emption certain Sioux Indians claimed these lands, although two reservations near them had been definitely set apart to them by metes and bounds. The Indians claimed general right of occupancy of these outlying lands for hunting, etc. A treaty for the relinquishment of this right of occupancy was not confirmed by Congress until 1874. In 1872, however, the railroad company filed the location of its route across these lands, and claimed the alternate sections provided for by law. The third section of the law "limited the grant to lands to which the United States *had then full title*, they not having been reserved, sold, granted or otherwise appropriated, and being free from pre-emption or other claims or rights." Held, by Mr. Justice Field, that "these lands had *not* been reserved, sold, granted or otherwise appropriated, but that the full title was in the United States, subject simply to the Indian right of occupancy, and therefore fell within the terms of the grant."

If the land in controversy in this suit was not reserved for Indian purposes by treaty, it must have been done, if at all, either by an executive proclamation or order, or by a law of Congress (Sec. 2258, Revis. Stats.). If not so done by either of these agencies, this tract never was an Indian reservation, and the title of Spalding, Adsit's grantee, is good.

There is not a scintilla of evidence in the record tending to show the existence of an executive proclamation or order concerning this land as an Indian reservation. Moreover, a careful examination of all executive orders ever made up to April 1, 1890, concerning Indian reserves in Michigan, fails to show any reference to this tract. All executive orders relating to Indian reserves, issued prior to April 1, 1890, have been compiled in a small book, under the direction of the Department of the Interior, which we will leave with the court for reference.

There remains for discussion the only remaining agency for creating an Indian reservation—a law of Congress.

The record does not disclose any specific law setting apart this tract of public land for an Indian reservation, nor do we understand that the appellee claims the enactment of any such law.

The learned court below makes no such claim, but bases its opinion upon the treaties to which we have already referred.

The only reference to an Indian reserve, at Sault Ste. Marie, in any law of Congress, is found in the act of September 26th, 1850, entitled "An act providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan."

Section 2 of this law reads as follows:

"And be it further enacted that the said Commissioner shall cause the Register and Receiver to be furnished with a map, on a large scale, of the lines of the public surveys at the Sault Ste. Marie, and it shall be the duty of the Secretary of War to direct the proper military officer, on the application of the Register and Receiver, to designate, or cause to be designated upon the map aforesaid, the position and extent of lots necessary for military purposes, as also the position and extent of any other lot or lots which may be required for other public purposes, and also the position and extent of the Indian agency tract, and of the Indian reserve." It will be noted that Congress in this act does not authorize or instruct any one to mark out, designate and sever from the public lands any specific amount or tract of land as *an* Indian reservation, but only to designate *the* Indian reservation,

that is to say, a tract of land presumably such. Of course such a mere presumption by Congress neither creates nor ratifies an Indian reservation, in the absence of proof that such reservation was legally created in the first instance.

We admit that a reservation may be said to be created by Congress when the President, by virtue of the power given him by general laws, either himself or through the head of an executive department, acting as his representative, severs from the mass of public lands, a tract for a reservation. This leads us to the inquiry whether such properly authorized action concerning this tract in controversy here, has ever been taken, and the burden of showing such authorized action rests upon the party asserting the claim, viz., the appellee in this suit. The first reference to any survey of this tract is to that made by Jos. H. Mullette, a deputy surveyor, in 1845. (Page 39, Record.)

No reason for this survey appears of record, but it may be presumed that Mullette was engaged in the ordinary work of a deputy in making surveys of public lands under instructions from the Surveyor-General, in accordance with the general laws providing for such surveys. While engaged in this work Mullette comes upon this tract, occupied by Indians, and runs some lines around it, and marks it "Indian reserve" in his field notes. Such an act by Mullette, either with or without specific instructions to do so from the Surveyor-General, could not create a reservation, nor be the official designation by boundaries of a reservation previously created, *unless* it appears that the Surveyor-General himself was acting under instructions coming through the proper channels from the head of an executive department. No pretense that such authority was conferred upon the Surveyor-General anywhere appears in the record. Furthermore, it appears by the evidence that Mullette was not sent into this district for the purpose of designating reserves at all. On page 46 of Record it appears that Carleton, the witness, was an assistant to Mullette in this survey. On page 47, Carleton swears as follows on cross-examination:

Q. "Now, in making that survey in 1845, did you *mark the limits of the military reserve?*"

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Q. "Now, in making that survey in 1845, did you *mark the limits of the military reserve?*"

A. "No, we only measured around the occupation of the military—that is, the barracks."

These surveyors did not attempt to fix the limits of any reserve, but simply "measured around the occupation of the military," and "around the occupation of the dead" (the cemetery), and "around the occupation of the Indians," the tract in question here.

The next alleged survey of this tract was made by Lieut. Whelpley, under the act of September 26, 1850, Whelpley did not pretend to delimit the so-called Indian reserve. On page 45, of the Record, Carleton swears, as follows:

Q. "You tell us that the Whelpley map, made under the act of 1850, did not give any southern boundary of what was called the Indian reserve?"

A. "It is not represented upon this map, no, sir; and I have never been able to discover in his field notes any reference to it."

Again on page 48 of record:

Q. "From your knowledge as an engineer and surveyor, and your familiarity with all these lands here, and the Whelpley survey, and your knowledge of the ground then, you would give us to understand that there had been no fixing of the limits of the reserve under the act of 1850?"

A. "No, I should say not, at least there is no record of it that I have been able to find."

No subsequent survey of this tract is claimed, and with the failure of Mullette and Whelpley to legally fix the boundaries of this tract as an Indian reservation, none were ever fixed, and without boundaries there was no reservation.

"Lands claimed as a portion of a military reservation as against a settler under donation act, substantially a pre-emption claim, must be shown to have been actually surveyed and set apart as a reservation by competent authority, clearly proven. Acts of officers of the Government under *supposed* authority is not enough."

Kelly vs. Dalles City, 19 Ore., 299.

In this case Bigelow, Kelly's grantor, settled on a tract of land in Oregon in 1853. In 1881 a patent was granted to him for a portion of it only, some 44½ acres being withheld as belonging to Dalles City, which had been purchased from the United States under the Act of 1871, disposing of useless military reservations. Kelly brought suit to recover this tract.

In 1848, Secretary of War Marcy published an order that the commanding officer of "the military stations *established* on the route to Oregon make a reserve of 10 miles square about the same, etc." The Adjutant-General, in transmitting this order to commanding officers at posts, used the words "that *might* be established." In 1852 the survey at the Dalles was made by order of the post commander, and for many years the tract surveyed was used and occupied as a military reservation, and was officially recognized as such by the Secretary of War, Jefferson Davis, in 1854.

In 1859 a resurvey of this tract was ordered by the War Department, and the limits were somewhat reduced, but still included Bigelow's claim. This was for many years known as "Harney's reservation," and subsequently was acquired by Dalles City under the act of 1871 referred to.

Held, that absence of proof of competent authority to make this reservation *before* Bigelow's settlement, was not cured by all the subsequent legal acts of the Government as to this tract, and Kelly must recover from Dalles City.

See also *U. S. vs. Tichenor*, 12 F. R., 415, in which it is held that when no authority is shown from a head of an executive department, a military officer has no power to survey and set apart public lands for a military reservation. Such an act might properly set aside for temporary use for military purposes, a tract of land, "but it would not have the effect to impart any special character to the land or constitute it a reservation for any purpose. It would still remain open to the claim of any qualified settler, and as soon as the camp was removed, might be actually occupied by such settler. Neither is it necessary that the resi-

dence and cultivation required of a settler must extend to or include every acre of the tract he claims." Incidentally in this case it is also held by Judge Deady that even the President cannot create a reservation (lighthouse), by such words as, "Let the tracts shaded blue on the within diagram be reserved for lighthouse purposes. FRANKLIN PIERCE."

September 11, 1854.

Court says, "How much land was contained within the blue lines no one knows," and these words had no legal effect beyond a mere precautionary suggestion that at some future time a reservation might be created at the points indicated.

It is true that Mullette marked this tract "Indian reserve" on his map, and so did Whelpley, and the register and receiver at Marquette say that it was "originally reserved for Indian purposes" (Record, pp. 88 and 89), but these acts and statements have no legal or binding effect.

This court seems to have settled this question in an exhaustive opinion in which it held:

"The presumption that public officers have done their duty is a legal [illegible] but it does not supply proof of a substantive and independent fact." "Where the documents relied upon as the foundation of plaintiff's title, declare that the property is in the hands of public officers charged with its custody, as having been confiscated with that of others described as rebels, and show a sale and conveyance of the premises according to the recitals, upon a confiscation of the property by the Spanish government, but do *not* show any decree or adjudication of confiscation sufficient to warrant the sale, or that the person whose property was thus sold was within the jurisdiction of any tribunal which could pronounce such a decree; held, that such documents were not sufficient to show a *legal* confiscation, *nor to pass title to the purchaser at the sale.*"

"Notwithstanding such recitals and the inferences to be drawn from them, the alleged confiscation of the property, if it ever took place, could have been lawfully effected only by means of a

formal judicial proceeding which must be primarily proved by the official record of the transaction or a duly certified copy thereof, and, secondarily in case of its loss, by proof of its previous existence and its contents. The certificates of other officers referring to it only incidentally and collaterally, although as the basis of their own official action, *are not legal proof of the fact itself.*"

Sabariego vs. Maverick, 124 U. S., 261.

See also

Dubuque R. R. Co. vs. Des Moines R. R. Co., 109 U. S., 329.

In this case a branch of the river was erroneously construed to be the boundary of a reservation, and was so noted on the maps of the General Land Office, instead of the main river itself. Held, "A mistake in officers of the Government in construing a reservation in a grant does not constitute an estoppel, and the reservation must nevertheless be construed by the court and have effect according to its terms."

Right of way granted by treaty to a R. R. Co. across an Indian reservation is a mere easement and gives no title to the land.

In re. Red Cliff Indian Reservation, 3 L. D., 591.

"The practice or the opinion of the officers of the Land Department cannot control the action or opinion of this court in expounding the law with reference to the rights of parties litigant before them."

Irvine vs. Marshall, 61 U. S., 558.

"Land office opinion that land is reserved is presumptive merely and may be overcome."

Cole vs. Markley, 2 L. D., 847.

That the tract of land in controversy here was not considered by Congress to be an Indian reservation within the law of 1841, clearly appears in the act of August 26, 1852, granting lands for

building the Sault Ste. Marie canal. Sec. 1 of that act reads: "That there be and is hereby granted to said State the right of locating a canal through *the public lands*, known as the Military Reservation of the falls of St. Mary's river, etc."

This court has settled the meaning of these terms as follows: "The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." "Grants of lands to aid in constructing works of internal improvement do not embrace tracts reserved by competent authority for any purpose or in any manner."

Newhall vs. Sanger, 92 U. S., 761.

"Without the consent of the Indians there can be no entry on their reservation for the purpose of surveying it." "As the attempted transfer of any part of an Indian reservation secured by treaty, would also involve a gross breach of public faith, the presumption is conclusive that Congress never meant to grant it."

Leavenworth R. R. Co. vs. U. S., 92 U. S., 733.

Since nothing appears in this record to show a request for the consent of the Indians on this tract, or that consent was ever given by them, or that any protest or claim of title was made by them during the survey, and construction of this canal which cut their so-called reservation into three distinct parts, is not the presumption *conclusive*, that these Indians never had, nor even thought they had, any title to these lands?

The Commissioner of the Land Office in 1860 did not claim an Indian title as the reason for refusing a patent to Adsit. The Indians themselves made no such claim, Congress never asserted it, neither did the defendant in error, in his answer to the bill in the court below, the trial court did not discover it; for seventy-one years such a title was unknown until asserted by the Supreme Court of Michigan in this suit.

Was this tract a military reservation in 1859?

The executive order of President Fillmore, December 9, 1852 (page 70 Record), appears to conclusively show the negative.

There is on file in the War Department, "A history of the post at Fort Brady," prepared in the Adjutant-General's office from the files and records of the department, in which appears, on page 14, the following:

"Under the provisions of Act of Congress, approved March 1, 1847, the President, on April 3, 1847, reserved for 'public uses' several tracts of land in Michigan, among them the site of Fort Brady. Its area included the north half of township 47 north, range 1 east.

"By the President's order, dated September 2, 1847, the reservation of Fort Brady was extended to include fractional sections 1 and 2 of township 47 north, range 1 west.

"The lands occupied by the missions, besides several other tracts, were claimed by occupants, and, under the provisions of Act of Congress, approved September 26, 1850 (9 Stats., page 469), the Register and Receiver at Sault Ste. Marie were authorized to examine and report upon these claims.

"By executive order of December 9, 1852, which declared certain lighthouse reservations, all the remaining lands situated in the tracts which were temporarily reserved for 'public uses' in the year 1847, except the military reservation at Fort Brady, *with an area of about 30 acres*, were restored to the public domain."

This description corresponds with that of the Westcott survey, before referred to in this brief, page 4.

If this tract did not cease to be a military reserve in 1852, it still remains one, and the patent of the defendant in error is void. In addition to Chandler's patent the records of the land office show the following patents granted for tracts outside the permanent reservation of Fort Brady, but within the limits of the reservation of 1847.

Patent to Thomas Ryan, part of Sec. 6, T. 47 N., R. 1 E., February 15, 1884.

Patent to Andrew Jackson, part Sec. 5, T. 47 N., R. 1 E., January 28, 1887.

Patent to Thomas R. Easterday, part Sec. 6, T. 47 N., R. 1 E.

Was this Tract a Town Site?

It seems to us that the defendant in error is or ought to be equitably estopped from asserting this claim against plaintiff in error, because this very claim was asserted against himself, when seeking a patent, by the village of Sault Ste. Marie, and after a struggle of two years duration in the land department, was decided adversely to the village by Secretary Teller (Record, pages 80 and 81).

Secretary Teller could not well have decided otherwise in the face of the final report of the Register and Receiver, April 4, 1853, "on the settlement of land claims at Sault Ste. Marie," where they say after noting the various reservations on the map under the Act of 1850, "our adjudications have been confined strictly to claims *outside of said reservations*, and in no instance have we confirmed claims or any portion of the same within said reservations" (Record, pages 100 and 101).

Further argument on this branch of the case appears to be unnecessary.

Was this Tract of Land Settled and Occupied for Purposes of Trade?

And therefore not subject to pre-emption. Counsel for defendant in error contended in the court below, that because the Indians *sold* their surplus fish, they were occupying this land for purposes of trade. This argument ought to receive no consideration, until a farmer who sells the surplus products of his fields is recognized by law as a merchant and trader.

Was Plaintiff in Error Guilty of Laches,

in that he took no further steps to assert his title after a patent refused in 1860?

Spalding had no way of legally enforcing his claim to a patent against the United States. He could only wait patiently until a patent was issued to some other claimant, and then ask the

courts to adjudicate his claim, which he has done. Immediately upon learning that Chandler had located his Scrip upon this tract, Spalding put his quit-claim deed on record (Record, p. 58), and at same time filed his protest in the Land Office against issuance of patent to Chandler (Record, p. 81), and employed U. S. Senator Conger, of Michigan, to look after the matter for him in Washington (Record, pp. 30–31).

Chandler obtained his patent in 1883, so that the deed and the protest were on file for two years before patent, and were notice to Chandler of Spalding's claim.

Moreover, Spalding testifies (page 58 of Record), that it was universally known at the Sault, that he claimed this land, and for this reason he did not personally say anything to Chandler about it. Spalding has been and is a poor man, and could not raise the money with which to litigate his claim until 1888, when he began this suit (Record, p. 30). Before patent issued to some one, Spalding had no redress, for it is well settled law that until a patent has issued, the jurisdiction of the courts as to title is excluded, but after patent has issued, questions of fraud, mistake, etc., in title can have their day in court.

Vantongeren vs. Hefferman, 5 Dak. T., 180,

and numerous cases there cited.

We desire to call the especial attention of the court to the clear distinction between an Indian reservation, within the pre-emption law of 1841, and a government reservation.

A tract of land reserved out of the original cession, and to which the Indian title at the time of cession was not extinguished, but remained unchanged from what it was before any of the lands were ceded, is an Indian reservation. If, at any time subsequent to and during the operation of the law of 1841, the lands in such a reservation were acquired by the United States by extinguishing the Indian title which had remained undisturbed up to the time of such acquisition, such lands would not be subject to pre-emption.

If, however, a reservation is created by the United States for the Indians, out of lands actually ceded to it by Indians previous to 1841, except those by the Miamis, as specified in the act, such a reservation is carved out of public lands, not out of Indian lands, and is a government reservation for Indian purposes, and not an Indian reservation at all. The surrender or abandonment of such a reservation at any time during the operation of the act of 1841, merely restored the lands included in it to the public domain, and being no longer reserved or appropriated for any purpose within the terms of that law, they became immediately open to pre-emption.

Such lands do not fall within the description of those "to which the title has been or may be extinguished by the United States during the operation of the act," for the United States certainly had the title when it granted the reservation for a special purpose, and could not lose it, except by a patent, which is not claimed in this case, and when the special purpose terminated the status of the title had not changed, and if any title was then to be extinguished by the United States, it was that of itself, which is absurd.

An Indian reservation, like a poet, "*nascitur, non fit.*" It springs naturally out of the original body of Indian lands. A government reservation is *made*, either by an executive order or a law of Congress. The Indian title to lands in an Indian reservation is original, inherent, a base or limited fee. The Indian title to lands in a government reservation is that of use merely. The former can be extinguished by the United States, within the law of 1841. The latter can be extinguished by the users only, and is not within the law of 1841.

If the treaty of 1820 had contemplated the creation of an Indian reservation, it would have been expressed in terms somewhat like these: "There is hereby *reserved* to the Indians *from* the ceded lands a certain tract (designating it) etc., but the language is, "the United States will secure to the Indians a place of encampment *upon the tract hereby ceded*, etc." Now, unless this

tract was understood to have been absolutely ceded to the United States, and the Indian title to have been wholly extinguished at this time, the United States had neither the right nor the power to secure a place for encampment, etc., and this clause of the treaty was meaningless.

If the Indians had not supposed their title to have been extinguished in 1820, they would not have submitted in 1852 to the survey and building of a canal across their lands without a protest. If Congress had not understood this tract to be public land, it would not have donated a part of it to the State of Michigan for canal purposes.

Now, while we contend that neither an Indian nor a Government reservation of lands was made by the treaty of 1820, nor at any subsequent time, if the court shall find that this tract was ever set apart for Indian purposes, we insist that at most, it could have been only a Government reservation which terminated in 1855, and was therefore open to Adsit's pre-emption in 1859.

If, then, the tract of land in controversy in this suit was not made an Indian reservation by treaty, by executive order, or by a law of Congress, and the Indian title to it as lands within the pre-emption law of 1841 was extinguished in 1820, if it was released as a military reservation and restored to the public domain by executive order in 1852, if it was not a town site within the meaning of the law in 1856, if it was not occupied for purposes of trade in 1859, and if Spalding was not guilty of laches in asserting his title, Chandler ought to be declared to hold his title to said land in trust for Spalding, and be ordered and decreed to execute and deliver to Spalding a good and sufficient deed of conveyance of the lands covered by his patent.

JOHN C. DONNELLY,
A. C. RAYMOND,
Counsel for Plaintiff in Error.

CITATIONS NOT APPEARING ON PRINTED BRIEF FOR PLAINTIFF IN ERROR.

No. 86.

SPALDING *vs.* CHANDLER.

Correction on Page 22.

Defendant's brief should read: We have *not* felt authorized, &c.

Townsite act, 1824, 4 Stats., 50.
Townsite act, 1844, 5 Stats., 657.

Legal Subdivisions.

Gazzam *vs.* Phillips, 20 Howard, 372.

Circular of Instructions to Registers and Receivers.

Lester's Land Laws, vol. 1, 362.
Wilson *vs.* Hoffman, 70 Mich., 552.

Townsite Question, Estoppel.

Davis *vs.* Wakelee, 156 U. S., 680.
Maricopa and Phœnix R. R. Co., 156 U. S., 347.
Lester's Land Laws, vol. 1, pp. 432, 437, 441, and proviso in case on page 442.

Laches.

Story, Equity Pleading, 847.
1 Daniel's Chancery, 712.

Owner is under no obligation to proceed against all persons who may assert a hostile title, although another person might be deceived by the apparent genuineness of such hostile title.

Meley *vs.* Collins, 41 Cal., 663–678.
Viele *vs.* Judson, 82 N. Y., 32.

See also—

Cranmer *vs.* McSwords, 24 W. Va., 601.
U. S. *vs.* City of Alexandria, 19 F. R., 609.

Notice—

Brush *vs.* Weare, 15 Peters, 93.
Reeder *vs.* Barr, 4 Ohio, 446.

Distinction between Indian title to land and Indian easement upon public land.

U. S. *vs.* Taylor, 3 Wash. Terr., 88.

The quitclaim deed from Adsit to plaintiff in error is found on page 86 of the record and is marked Exhibit "B." The deed marked Exhibit "D," p. 82, does not belong in the case, and gets there evidently by a mistake in copying from the records in the registry office for Chippewa county.

We leave with the court also a copy of executive orders relating to Indian reserves, referred to in our brief, page 18.

Patents referred to on page 25 of our brief:

To Thomas Ryan, Mis. vol. 6, pages 9 and 10, Record of Patents, Gen'l Land Office.

To Andrew Jackson, Record Porterfield Scrip, page 119, Gen'l Land Office.

JOHN C. DONNELLY,
ALONZO C. RAYMOND,
Counsel for Plaintiff in Error.

FILED.
MAY 3 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 367.

WILLIAM P. SPALDING,
Plaintiff in Error.

vs.

WILLIAM CHANDLER,
Defendant in Error.

Brief of John H. Goff, Counsel for Defendant in Error.

DETROIT:
Record Printing Co., Free Press Bldg., Lafayette Ave.
1895.

IN THE

Supreme Court of the United States.

WILLIAM P. SPALDING,
Plaintiff in Error.

vs.

WILLIAM CHANDLER,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

The land claimed to have been pre-empted by Byron B. Adsit, the grantor of plaintiff in error, was land which from 1820 to 1855 had been an Indian reservation.

June 16, 1820 (7th Statute, 206, Article 1), the Chippewa tribe of Indians ceded to the United States sixteen square miles of land designated by metes and bounds, reserving, however, by Article 3, rights of fishing and encampment, and the "United States will secure to the Indians a *perpetual* right of fishing at the Falls of St. Mary, and also a place of encampment upon the tract hereby ceded convenient to the fishing ground, which claim shall not interfere with the defenses of any military work which may be erected nor with any private rights."

March 24, 1836 (7th Statute, 491), the Ottawa and Chippewa nations ceded to the United States a large tract of country, including in its general limits the sixteen square miles above mentioned. By article 3 of this treaty the right of fishing and encampment above referred to was preserved to the Indians in the following words: "It is understood that the reservation for a place of fishing and encampment, made under the treaty of St. Marys, of the 16th of June, 1820, remains unaffected by this treaty."

July 31, 1855 (11th Statute, 621), the said tribes released and discharged the United States from all its obligations and liabilities under former treaties and in lieu thereof accepted other grants and payments, exempting, however, from such relinquishments the right of fishing and encampment to the Chippewas of Sault Ste. Marie by the treaty of 1820.

August 2, 1855 (11th Statute, 631), the said Chippewas of Sault Ste. Marie relinquished to the United States for a valuable consideration all their interests in this land. Article 1 of said treaty was as follows: "The said Chippewa Indians surrender to the United States the right of fishing at the Falls of Sault Ste. Marie and encampment convenient to the fishing grounds secured to them by the treaty of June 16, 1820."

The land was designated in the cancelled pre-emption papers as "Indian Reserve," and was marked on all maps of the United States Survey as "Indian Reserve."

Record, pp 103, 104, 105.
Map Defendant's Exhibits 5 and 6.

The out boundaries of the reservation were recognized by the survey of 1845.

Record, p. 39.

No interior lines were drawn in the survey and the Indian Reservation remained one tract.

Testimony of Surveyor Carlton, Record, p. 55.

The Act of Congress of September 26, 1850, entitled "An act providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan," made it the duty of the Secretary of War to direct the proper military officer to designate upon the map of the public surveys at Sault Ste. Marie the position and extent of the Indian Reserve.

9 U. S. Statutes, p. 469.
Letter of Instructions to R. & R., Record, p. 93
Report of R. & R., Record, p. 100.

The letter of instructions of the Commissioner of the General Land Office, of August 14, 1851, to the Register and Receiver at Sault Ste. Marie, required the position and extent of the Indian Reserve to be designated on the map of the lines of the public surveys.

Record, p. 96.

The Register and Receiver, April 4th, 1853, reported that there had been designated on the map:

The Indian Reserve.

The Military Reservation of Fort Brady.

The Indian Agency.

The St. Mary's Canal Reservation of 400 feet in width.

Record, p. 100.

The Register and Receiver in their letter of December 5th, 1859, relating to Adsit's claim to the Indian Reserve, say: "We have examined the proofs in the pre-emption claim of Byron B. Adsit, to what is designated Indian Reserve in section 6, township 47 north, of Range 1 east, containing 36 50-100 acres, and find that the same was originally reserved for Indian purposes."

Record, p. 88.

The entire Indian Reserve was not attempted to be pre-empted.

The alleged pre-emption of Adsit excepted the 400 feet strip, which the United States had donated in 1852, for the construction of a canal, by an act, entitled, "An act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal around the Falls of St. Marys in said State."

Record, p. 104.
10 Statutes U. S., p. 35.

This grant was accepted by the State of Michigan in 1853 by an act of the Legislature, entitled, "An act to provide for the construction of a ship canal around the Falls of St. Marys."

Session Laws 1853, pp. 48-51.
Appendix to this brief, No. 1.

The ship canal was built through the Indian Reserve and the right of way strip of 400 feet, and the canal divided the Indian Reserve into three distinct parts, two parts of which were north of the canal and one part south.

Testimony of Surveyor Carleton and the complainant. (Record, pp. 41, 55, 23.)

Secretary Teller, in his decision of June 8th, 1883, said: "The Indian Reserve, designated upon it, is in three parcels, one of which is the tract in controversy."

Record, p. 80.

The act of Congress granting the 400 feet strip was approved August 26th, 1852.

10 Statutes U. S., p. 35.

The Indian Reserve was at the time of the alleged pre-emption included within the limits of lands which had been selected as a site of a village. The Legislature in 1849 incorporated the Village of St. Mary.

Session Laws of 1849, pp. 336-337.
See appendix to this Brief, No. 2.

The law was repealed in 1851.

Session Laws of 1851, pp. 30 and 31.
Appendix to this Brief, No. 3.
Testimony of William P. Spaulding, Record, pp.. 31, 32, 36.

The Indian Reserve was at the time of the alleged pre-emption within the limits of land confirmed as a town site by the act of Congress, enacted September 26th, 1850.

9 Statutes, p. 469.

The complainant has lived in the Village of Sault Ste. Marie since 1846, excepting a few years, and kept store on Water street in 1854 down to 1862.

Record, pp. 34, 21, 22.

Portions of the Indian Reserve have been occupied by Indians since 1820. The Indians were removed by the canal officers in 1884.

Record, p. 26.

There were no interior lines drawn in the survey of the Indian Reserve and it remained one tract in bulk.

Record, p. 55.

The north and south quarter section line of section 6, if extended, would be the west line of Pine street, and all of the Indian Reserve west of Pine street would be in the northwest fractional quarter of section 6, township 47, north of Range 1 east, and all of the reserve lying east of Pine street would be in the northeast quarter of said section 6.

Record, p. 54.

Water street, in the Village of Sault Ste. Marie, at the time of the alleged pre-emption was in the northeast quarter of section 6.

Record, p. 34.

Water street in 1859 was lined with places of trade, business stores, saloons, hotels and warehouses.

Record, pp. 34, 35, 42 and 43.

Situate upon the tract of land in controversy is a stone power-house and electric light plant, a canal cut through the rock.

Record, p. 29.

These improvements were placed on the land in 1887 and 1888, and before the commencement of the suit. The total value of these improvements is the sum of $50,000. The electric light plant began to operate in August, 1888.

Record, p. 57.

That part of the Indian Reserve which lies south of the ship canal is and has been used for years by the United States as a canal park, and has situated upon it the engineer's office.

Record, pp. 26, 36 and 37.

The northwest quarter of section 6 was cut up by village lots and private land claims, viz.:

Village lot 3, private land claims 3 and 4, and other claims.

Record, p. 54.
Large map, Defendant's Exhibit "6," referred to in Record, pp. 39, 103.

The north fractional half of fractional township 47, north of Range 1 east, which includes the alleged pre-empted lands, was reserved for public uses under the act of 1st of March, 1847, by order of the President of the United States on the 2nd or 3rd of April, 1847 (Record, pp. 62, 63, 94, 95, 96), and released in 1852 (Record, pp. 69, 70). Except the Military Reservation at Fort Brady.

No declaratory statement was filed by Adsit.

The pre-emption papers, consisting of the affidavit of Byron B. Adsit, C. C. Child and W. F. Clitz, Receiver's duplicate receipt and Register's certificate, were forwarded to the Commissioner of the General Land Office under date of December 5th, 1859. (Record, pp. 103, 104, 105, 89.)

April 9th, 1860, the entry of Byron B. Adsit, No. 2592, was cancelled by the Acting Commissioner of the Land Office for the reason that the land was not subject to pre-emption. (Record, p. 106.)

The Receiver and Register were notified as follows:

"General Land Office, April 9th, 1860.

Register and Receiver, Marquette, Michigan:

Gentlemen:

Your letter of the 8th ult., in the pre-emption case of Byron B. Adsit, is received, the land claimed by him not being subject to pre-emption, his entry No. 2592 is cancelled.

You will note cancellation on your books and plats, and notify him to make the usual application through your office for the repayment of his purchase money."

Four months after the cancellation of his pre-emption entry, viz.: August 7th, 1860, Adsit, for the consideration of one dollar, gave a quit claim deed to the plaintiff in error of the pre-emption land. (Record, pp. 86, 87.)

This quit claim deed was not recorded until some time after complainant, William P. Spalding, had heard that the defendant Chandler had located the Porterfield scrip on the land. (Testimony of W. P. Spalding, Record, p. 58.)

May 17th, 1881, William Chandler, the defendant, made application to locate the Porterfield scrip on the land in question in this suit. (Record, pp. 77, 78.)

Said application of Chandler was rejected by the Receiver and Register at Marquette "for the reason that the land described appears to be within the corporate limits of the village of Sault Ste. Marie, and its disposal subject to the provisions of the act of Congress, approved September 26th, 1850."

The decision of the Register and Receiver was reversed and the location allowed by Commissioner McFarland, October 13th, 1881. (Record, pp. 77, 78.)

June 8th, 1883, the decision of Commissioner McFarland was affirmed by Secretary Teller. (Record, pp. 79, 80, 81.)

December 15th, 1883, a patent for the land in question herein was issued to William Chandler.

The patent was recorded in the Register of Deeds' Office February 29th, 1884. (Record, p. 84.)

December 23rd, 1881, William P. Spaulding, plaintiff in error, forwarded to the Commissioner of the General Land Office a protest against the issuing of a patent to any person, and praved that a patent for the Indian Reserve issue to him. (Record, pp. 21, 29, 30, 85, 86.)

January 18th, 1882, the Commissioner of the General Land Office notified the plaintiff in error that Adsit's entry was cancelled April 9th, 1860, for the reason that the land described in the entry was not subject to pre-emption, and directing him to apply for a refunding of the purchase money and enclosing blanks therefor. (Record, pp. 87, 88.)

No appeal was taken by plaintiff in error for the only reason alleged by him, viz.: Want of funds. (Record, pp. 30, 58.)

The bill of complaint was filed herein November 22nd, 1888.

Replication was filed and the cause was heard upon testimony taken in open Court by Judge Claudius B. Grant, now Associate Justice of the Supreme Court of the State of Michigan.

Abstract of opinion of Judge Grant.

Judge Grant found as facts:

1. That defendant Chandler, after his location, took possession of the land. That valuable improvements were placed upon the land and a canal dug and an electric light plant erected and finished about February 1st, 1888.

2. That complainant resided during all this time at Sault Ste. Marie and knew of the improvements.

3. The ship canal of 1855 divided this Indian Reserve into three parts, two of which were north and one part south of the canal. That Adsit made no improvements on two of these parts, and that the lands were not fit for agricultural purposes, and that the land was described as an Indian Reserve.

That Indians from 1846 down to 1885 occupied houses on the eastern part of the Indian Reserve, north of the ship canal, and sold fish to boats passing through and to citizens.

That prior to 1859 the land in dispute was included within the limits of the Village of St. Mary.

The land had been selected as a part of the Village of Sault Ste. Marie by authority of the government, and the repealing act of the Legislature of 1851 did not affect the question.

Judge Grant's conclusions of law were:

1. Three such separate and distinct parcels could not be pre-empted by occupancy of one.

2. This land had been selected as a town site and could not be pre-empted.

3. The land sought to be pre-empted was occupied before and during and after Adsit's entry by Indians who were engaged in the business of trade.

4. No preliminary statement having been made or filed by Adsit his pre-emption failed.

5. The complainant was guilty of laches and abandoned his claim.

The bill was dismissed.

Record, p. 11.

The case was appealed to the Supreme Court of Michigan, where the decree of the Court below was affirmed. The opinion of the Court held that the lands alleged to be pre-empted had been part of an Indian Reservation and could not be pre-empted.

Spalding vs. Chandler, 84 Mich., 140.

ARGUMENT.

I.

UNDER THE PRE-EMPTION ACT OF 1841, INDIAN RESERVATIONS, TO WHICH TITLE HAD BEEN OR MIGHT BE EXTINGUISHED DURING THE OPERATION OF THE ACT, WERE NOT LIABLE TO PRE-EMPTION ENTRY.

The reason for the exempting lands selected for the site of a town and Indian reservations was stated by Mr. Justice Miller as follows:

"Whenever a town springs up upon the public lands, adjoining lands appreciate in value. The reasons are obvious, and the fact is well known. So, too, when a railroad is built through a section of country the same result follows. So, too, in respect of lands which have been reserved for the use of an Indian tribe, when the Indian title is extinguished, the same may be said. While such lands are held as a reserve population flows up to their boundaries and is there staid. It of course constantly grows more and more dense, so that when the reserve is vacated the lands have increased in value and are always eagerly sought after. The other classes of lands mentioned in the exception, as, for instance, those on which are situated any known salines or mines, have some intrinsic value above others.

Now all these classes of lands are excepted from the operation of the act, and for the one common and obvious reason, that being of special value, the government desires to retain the advantage of their appreciation, and is unwilling that any individual, because of a priority of settlement, which certainly can be of but brief duration, should, to the exclusion of others equally meritorious, reap benefits which he did not sow.

This is as true of lands within the limits of an incorporated city as of any other of the classes mentioned in the exception. And it is no answer to this view to suggest that lands thus excluded from pre-emption are not occupied for a town. They are included within its limits by the local Legislature, because likely to be required for such occupancy. And it is this fact, and their proximity to the town, which gives them special value."

Roots vs. Shields, 1 Woolworth, p. 362.

Was the land designated on the map of the United States survey in the land office at Marquette as Indian Reserve, an Indian Reservation?

My opponents in their argument upon the question of the Indian Reservation have followed the line of reasoning used in the early part of litigation relative to the tract of land, part of which is in controversy. Their argument has been so ably controverted by arguments of counsel that I shall employ the same in part, in this brief, *mutatis mutandis*.

My opponents seriously argue that the Indian title to the premises in controversy was absolutely extinguished by the treaty of 1820, and that no reservation for Indian purposes has ever existed since. They say, in substance, that the Indians ceded all their land and reserved only the right to fish and encamp on the shore of the river at St. Mary's Falls. In other words, that their title passed to the United States and was extinguished, but that certain privileges remained to them. Such an argument must be advanced in forgetfulness of what the original Indian title was. The right or privilege which my opponents concede was reserved and secured to the Indians in respect to the land in controversy is the only title which they ever had to any of the lands, to wit: The bare right of occupancy and possession. This bare right of occupancy (encampment perfectly describes it) is the only title they originally had to the entire sixteen square miles. They ceded the sixteen square miles to the United States; that is, their right to occupy, possess and encamp upon it, except, however, for themselves, their original right to the tracts on the river and the privilege of fishing in its waters; that is the legal effect of the cession they made, and it is the ordinary case of a deed with an excepting clause. The original Indian title was simply the right to remain upon the land and live upon its products in such a manner as was consistent with the enjoyment of an absolute and perfect fee by the United States.

Johnson vs. McIntosh, 8 Wh., 543.
U. S. vs. Cook, 19. Wall., 593.

This precarious right was alienable only to the United States, but could be so conveyed by treaty.

Ladiga vs. Roland, 2. How., 581.
Cherokee Tobacco, 11 Wall., 621.

As the subject of alienation, it was the creature of the ordinary rules of transfer. A grant could be made of the

whole, or of a part, or of the whole, except a part. This latter was what was done. The whole was ceded and the part excepted, both by apt language. No set form of words or phrases was necessary to set aside the reservation. It was set apart, a place to be used for a specific public purpose. It was enough if there were sufficient words to indicate the purposes of the power that could act to show that in the given case it did act.

U. S. vs. Payne, 2 McCrary, 289-306.

But whatever the right was which remained in the Indian and appertaining to this land, it was certainly expressly protected by the reservation in law and in fact. It is hard to imagine a weaker title than that of the original right of occupancy, but if my opponents can find one they simply point out the Indian interest for which this land was reserved and set apart from the public domain, in the language of the Court in Wilcox vs. Jackson, 13 Pet., p. 498, "appropriated." That interest, whatever it was, attaching to this land, was legally protected by the treaty, and the land was appropriated to that specific use, hence reserved. It was reserved in fact. Every map extant of official character, either in the War Department or the Interior, designate the tract as an Indian Reserve.

The act of September 26th, 1850, expressly recognizes it as an Indian reservation, and provides for its specific and definite location in the contemplated survey to the end that it might not be sold with rest of the land. The formal official survey under this act fixes and ascertains its location and extent.

9 U. S. Statutes, p. 469.

This act, section 1, authorized the Register and Receiver of the land office at Sault Ste. Marie to examine and report upon claims to lots at the Sault Ste. Marie, according to the provisions of the act, and pursuant to such instructions as might be given by the Commissioner of the General Land Office; and section 2 provided that the Commissioner should furnish the Register and Receiver with a map on a large scale of the lines of the public surveys at the Sault Ste. Marie, and made it the duty of the Secretary of War to direct the proper military officer on the application of the Receiver and Register to designate or cause to be designated upon said map, among other things, the position and extent of the Indian Reserve.

In pursuance of this act the Commissioner of the General Land Office, under date of August 14th, 1851, issued his letter of instruction to the Register and Receiver.

These instructions provided for the designation by the proper officers upon the map, transmitted therewith, the position and extent of the Indian Reserve, and stating further that after the lands to be reserved are thus designated the Register and Receiver are to examine and report upon the residue.

April 4th, 1853, the Register and Receiver made their report on the settlement of land claims at Sault Ste. Marie (Record, pages 100, 102), and in this report the Register and Receiver, under the head of "reservations," say: "In accordance with the second section of said act and the instructions, the Military Reservation of Fort Brady, according to Wescott's survey, so-called, the Indian Reserve, the Indian Agency, Reserve and the St. Mary's Canal Reservation of 400 feet in width, as located by Capt. Canfield on the 14th of October, 1852, acting under authority from the Governor of Michigan, have been designated on the plat of the public survey of said village accompanying our abstracts, and our adjudications have been confined strictly to claims outside of said reservations, and in no instance have we confirmed claims or any portion of the same within said reservations."

Indians were living on the land called Indian Reserve before and in 1850, and continued to reside on part thereof, in wigwams and log houses, until a few years ago when removed by the Government officials. (See testimony of the complainant William P. Spaulding, Record, pages 21, 22, 26.)

The direction of the Secretary of War to the proper military officer to designate the position and extent of the Indian Reserve was executed, and the Deputy United States Surveyor, Thomas Whelpley, did designate upon the map of the village the position and extent of the Indian Reservation.

Thus we have the treaties aforesaid and the land surveyed and boundaries fixed by the United States as a reservation for Indians and occupied by Indians, and designated on the map of the United States as an Indian Reservation, all of which establish that it was a reservation.

The Surveyor-General of the United States, by his deputy Whelpley, approved the map, showing the position and extent of the Indian Reserve.

See Large Map, Defendant's Ex. "6."
Returned with Record, R., p. 39.
Record, p. 103.

Upon the approval of plat or actual survey by the United States Deputy Surveyor, the same was returned to the Register and Receiver, who transmitted the same to the Commissioner of the General Land Office, whose decision was final and binding on the parties and on the Government.

9 Stats., p. 469, sec. 8.

The President, Franklin Pierce, in pursuance of the advice and consent of the Senate, on the 24th day of April, 1856, accepted and ratified the treaty made in 1855.

Three articles of that treaty are worthy of attention, as showing how the treaty-making power regarded the reservation made in 1820.

Article 1. The said Chippewa Indians surrender to the United States the right of fishing at the Falls of St. Mary's, and of encampment convenient to the fishing ground, secured to them by the treaty of June 16, 1820.

Article 2. The United States will appoint a commissioner who shall, within six months after the ratification of this treaty, personally visit and examine the said fishery and place of encampment and determine the value of the interest of the Indians therein as the same originally existed. * * *

Article 3. The United States also give to the chief O-shaw-waw-no, for his own use, in fee simple, a small island in the River St. Mary's, adjacent to the camping ground hereby surrendered, being the same island on which he is now encamped, and said to contain less than half an acre. * * *

11 Stats., p. 631.

The Indians surrendered the right of fishing and of encampment, and the United States gave to Chief O-shaw-waw-no a small island "adjacent to the camping ground hereby surrendered," and the United States agreed to appoint a commissioner to personally visit and examine the said fishing ground and place of encampment, to determine the *value of the interest of the Indians as it originally existed.*

Each of the high contracting parties term the place of encampment "camping ground." Land is ground, and ground is land, and thus we have land to which the Indian title was extinguished by the United States in 1855.

It is useless to speak of the treaty of 1820 as reserving only a temporary use. The right secured was a "perpetual" one.

7 Stats., 206, Art. 3.

Counsel, at pages 19 and 20 of their brief, quote from the record testimony of Surveyor Carleton to show that Mullette and Whelpley, the Government surveyors, failed to fix the boundaries of this tract as an Indian Reservation and that none were ever fixed. (Brief, p. 20.) The quotation was only part of the testimony in this regard. On page 48 of the record witness Carleton says:

RE-DIRECT EXAMINATION.

I want to call your attention to this map here. Now I show to you a part of this Indian Reserve in question in this suit and call your attention to the south boundary of the Indian Reserve. What was there at the west end of the reserve, south of the reserve? What is that there?

A portion of Portage street.

The Portage street is located on the south of this reserve?

It is located part of it on the south side and part on the north side, as I have verified by locating the lines.

You are referring to the mill race?

Yes, sir.

But, as it shows on this map, the part south of the boundary of the Indian Reserve is Portage street?

Yes, as shown on this map.

And south of Portage street, which is the south boundary of part of the Indian Reserve, is lot 3, as adjudicated under the act of 1850?

Yes, sir.

And part of the southern boundary is part of claim 4, is it not?

Yes, sir.

And part of the remaining boundary is the canal reservation, is it not?

Yes, it is so laid down on this map.

What are these figures on the south lines of this map—on the south line of this street?

That is the course that the line of the street bears and the distance to the intersection of the canal grant from the river front.

So the courses and distances as laid down on this part of the Indian Reserve would enable you to survey it?

Yes; to retrace it.

To retrace it?

Yes, sir.

RE-CROSS EXAMINATION.

What do you mean by retracing it?

Picking up the old lines as we find them recorded in the field notes. Retracing means that we follow out the original line from the recorded field notes that we have as a guide. Of course the variation of the compass at this time and a long time ago will be somewhat different, but there are always some objects that we can note so as to regulate that."

Plaintiff's counsel claim that the Indian Reservation had not been legally surveyed. (Brief, pp. 20, 22.)

By making this claim they necessarily abandon all pretense of a pre-emption of the Indian Reserve, because the pre-emption law of 1841 expressly provides that pre-emption must be by "legal subdivisions."

5 Stats. p. 455, Sec. 10.

Counsel, however, in order to bring the Indian Reserve within the requirements of the pre-emption law as to "legal subdivisions," say, in statement of the case (Brief, p. 1), that the lot had been surveyed as a "fractional and anomalous legal subdivision."

Is it possible for this tract to be a "legal subdivision" for purposes of pre-emption, and yet not have any boundaries, q..... 'ty or quality, as an Indian Reserve?

In this connection I quote from the language of Graves, C. J., in Jacobs vs. Miller, 50 Mich., 126: "Among the rules which have become axiomatic is one that a party must be consistent and not contradictory in the positions which he takes. In the language of Lord Kenyon, he must not 'blow hot and cold' at the same time. And one of the most important applications of the rule is where a party endeavors to establish a right or title in himself under one provision, or implication of a deed or other instrument by ignoring or contradicting another provision or implication which is destructive or fatally repugnant."

Referring to brief of plaintiff's counsel on page 24, it will be seen that counsel claim that the Indians never

claimed the Reserve as a reservation, and that defendant did not assert the fact of a reservation in his answer, and that for seventy-one years such a title was unknown.

The reply to this is that the Indians, sixteen years after the treaty of 1820, and in the treaty of 1836, expressly claimed the reservation made in 1820, and the treaty-making power expressly conceded the claim of the Indians to the reservation, and described it as a reservation that had been made.

Article 3 of the Treaty of 1836 expressly reserved to the Chippewas, among other things, "Round Island, as a place of encampment for the Indians," and expressly provided as follows: "It is understood that the RESERVATION for a place of fishing and encampment MADE under the treaty of St. Mary's, of the 16th of June, 1820, remains unaffected by this treaty."

7 U. S. Stat., 492.

The register and receiver, on December 5th, 1859, reported to the Commissioner of the General Land Office as follows: "We have examined the proofs in the pre-emption claim of Byron B. Adsit to what is designated Indian Reserve in section 6, town 47 north, of range 1 east, containing 36.50 acres, and FIND THAT THE SAME WAS ORIGINALLY RESERVED FOR INDIAN PURPOSES; that it was surveyed in 1845, and the contents ascertained as appears by our maps."

There was no necessity for setting up the fact of Indian Reserve in the answer of defendant.

The complainant had averred that the land he claimed to pre-empt was described on the maps of the United States Survey as "Indian Reserve," and somewhere in section 6.

Record, p. 1.

The defendant denied that the land was subject to pre-emption.

Record, p. 2, sec. 2.
Record, p. 6.

Complainant said in his sworn bill (Record, p. 2, sec. 3), that the officers of the land office at Washington claiming as a matter of law that said land was not properly subject to pre-emption purchase, and assigning NO OTHER REASON for the refusal to issue a patent.

The duty is on complainant to make good his assertion that the land was subject to pre-emption.

II.

THE PRE-EMPTION ACT REQUIRED THAT WHEN ANY PERSON SHOULD SETTLE AND IMPROVE A TRACT OF LAND, SUBJECT AT THE TIME OF SETTLEMENT TO PRIVATE ENTRY, INTENDING TO PURCHASE THE SAME, HE SHOULD, WITHIN 30 DAYS AFTER THE SETTLEMENT, FILE WITH THE REGISTER A WRITTEN STATEMENT DESCRIBING THE LAND SETTLED UPON.

5 Statutes, p. 457, Sec. 15.

The bill avers in this case that Adsit entered the tract in question according to law, but no proof has been had that he signed a declaratory statement. No abstract of the statement has been produced, and defendant's Exhibit "4," Record, pages 103, 104, 105, which is certified to be copies of the final proof and entry papers in the Adsit entry, does not show the declaratory statement or any abstract thereof.

When the Register and Receiver mailed to Washington the pre-emption papers of Adsit, they sent affidavits of Byron B. Adsit, affidavit of C. C. Child, affidavit of W. F. Clitz, Receiver's duplicate receipt, Register's certificate, but no declaratory statement.

Record, p. 89.

There is no proof of a declaratory statement having been made by Adsit, and complainant must show it, and that every condition precedent to the issue of the certificate of purchase was complied with.

Bangs vs. Stevenson, 63 Mich., 668.
Remeau vs. Mills, 24 Mich., 15, 17
Curtis vs. Goodenow, 24 Mich., 21.
Bohall vs. Dilla, 114 U. S., 47, 51.
Sparks vs. Pierce, 115 U. S., 408.

III.

THE PRE-EMPTION LAW OF 1841 ONLY AUTHORIZED THE ENTRY OF SURVEYED PUBLIC LANDS BY LEGAL SUBDIVISIONS.

The boundaries of the Indian Reserve were fixed as early as 1845. The U. S. Deputy Surveyor set a post at the head of the mill race, at the northwest corner of the Reserve; then ran a line down the mill race to the southeast corner of the reserve, where he set a post; thence along the out-let of the race to the river of Straits of St. Mary, where he set a post at the corner of the store-house; thence along straits up stream, he meandered to the place of beginning.

Record, p. 39.

And thus it remained in a tract by itself. No interior lines were run at time of public survey, and none could legally be run up to 1856, because the law regulating the public surveys prevented the survey of Indian reservations.

U. S. Rev. Stats., Secs. 2395, 2396, 2118.

The status of the Indian Reservation at the time of the public surveys in Michigan was fixed as unsurveyed land. It may have been surveyed between 1856 and 1859, or later, but had it been surveyed before 1859 there would have been no reason for Adsit failing to describe it in his pre-emption papers according to legal subdivisions.

It could not have been offered at public sale by the description, "Indian Reserve," because public lands must be purchased in sections, half sections, quarter sections or quarter-quarter sections, or lots.

R. S., Sec. 2354.

And the purchaser was obliged to produce a memorandum in writing describing the tract he wished to purchase in the above terms.

Revised Stats., Sec. 2555.

And according to the pre-emption act, which gave a preference right of purchase to the settler, he had to file a written statement describing the land, viz.: The legal subdivision settled upon.

5 Statutes, p. 457, Sec. 15.

Legal surveys and subdivisions of the public lands are made in accordance with the Revised Statutes of the United States.

In the case of Warner vs. Van Brunt, 19 Wall., 646, claim was made to 40 acres of land in Minnesota by two settlers, and in deciding the case Mr. Chief Justice Chase said: "There is no legal subdivision of the public lands less than a quarter of a quarter of a section, or 40 acres, except in case of fractional sections."

In the case of Webster vs. Newell, 66 Mich., 508, Champlin, J., in discussing a claim under a law of the State to several parcels of land, said:

"I do not think the law contemplated any division less than a subdivision recognized by the practice in the General Land Office of the United States Government, and the least subdivision, except in case of fractional lots, so recognized is 40 acres.

Pre-emptions were not allowed on unsurveyed lands until three years after Adsit claimed to pre-empt. The act allowing pre-emption on unsurveyed lands was not passed until June 2, 1862.

12 U. S. Statutes, 413.
Atherton vs. Fowler, 96 U. S., 513.

Both the pre-emption act of 1841 and the Town Site Act of 1844 limited the right of entry to surveyed lands.

Stark vs. Starrs, 6 Wallace, 402.

Speaking of entries under the Town Site Act of 1844, the Supreme Court of Michigan, in Cash and Spalding, Appellants, 6 Mich., 206, say: "While the entry is only allowed to cover such land as is actually occupied by the settlers, it must nevertheless be made according to the Government subdivisions, as the law does not permit these to be broken in upon."

And again at page 208, and "if any portion of the subdivision had been occupied legitimately for town purposes in advance of him, he certainly could not prevail in an agricultural pre-emption."

It would seem to be conclusively established that the plaintiff's grantor, Adsit, could not lawfully pre-empt lands by describing the same as "Indian Reserve," which lay in different quarter sections, when his shanty was situated only on one of these separate and distinct tracts composing the Indian Reserve.

IV.

UNDER THE PRE-EMPTION ACT OF 1841, NO SECTIONS, OR FRACTIONS OF SECTIONS, INCLUDED WITHIN THE LIMITS OF ANY INCORPORATED TOWN, AND NO PORTIONS OF THE PUBLIC LANDS WHICH HAD BEEN SELECTED AS THE SITE FOR A TOWN, AND NO PARCEL OR LOT OF LAND ACTUALLY SETTLED AND OCCUPIED FOR THE PURPOSES OF TRADE, WERE LIABLE TO ENTRY.

5 Stats., pp. 455, 456, Sec. 10.

The history of Sault Ste. Marie extends over a period of more than one hundred and fifty years.

Alexander Henry, in his "Travels," p. 58, states that in 1762 there was at Sault Ste. Marie a stockaded fort and four houses.

Schoolcraft, who accompanied General Cass in 1820 to the Sault to negotiate a treaty, in describing the village, says in his "Travels," p. 132: "The Village of Sault Ste. Marie is on the south of the American shore and consists of from fifteen to twenty buildings."

The Military Post, known as Fort Brady, established there at an early date, 1822, soon brought around it quite a settlement, which in 1849 was incorporated by the Legislature of the State under the name of the Village of St. Mary. Its boundaries commenced at the northeast corner of the Military Reserve and extended south one mile, west two miles, thence north one mile, and thence easterly, following the meanderings of the St. Mary's River, to the place of beginning.

Appendix hereto, No. 2.
Record, pp. 31, 32.

Within the limits of this incorporated village was situated the Indian Reserve.

Complainant's testimony, Record, pp. 31, 32.

Inhabitants, stores, warehouses, tram railways and all the characteristic buildings of a village were in this incorporated village.

Record, pp. 34, 35, 36, 42, 43, 45, 46, 47.

As there were nearly one hundred and fifty private land claims granted under the act of September 26, 1850, and

as no one could be allowed a claim who had not on the 1st day of January, 1849, reduced a lot into possession and been an actual bona fide settler, it appears from that fact alone that there was a large number of people in the Village of St. Mary in 1849. Even the village cemetery lot was designated on the map of Whelpley's U. S. Survey as Cl. 135.

See Defendant's Exhibit "6," Certified Copy of Village Map.

The village incorporation continued for nearly three years, and until March, 1851.

"An act incorporating a city which is located on the public lands, does not, by its own force, withdraw lands from pre-emption. That effect is produced by the Congressional provision, and is remote, indirect, and only consequential.

"These obvious considerations show very clearly that when Congress provided that the territory should not interfere with the primary disposal of the soil, it did not intend to deny the authority to incorporate a city on the public lands."

Root vs. Shields.
1 Woolworth's Circuit Court Reports, pp. 359, 360.
Houlton vs. C. St. P. M. & O. Ry. Co., 56 N. W. Rep., 336.
Burfenning vs. C. St. P. M. & O. Ry. Co., 48 N. W. Rep., 444.

The repeal of the act of incorporation was not passed until the act of Congress of September 26, 1850, was passed.

This act of Congress (9 stat., 469) recognized that lands at the Sault were occupied as a village or town, and provided for the settlement and adjustment of claims thereto, and section 7 provided for making a map of the village, and made it the duty of the deputy surveyor to lay off and survey the village of Sault Ste. Marie into

Town lots,
Streets,
Avenues,
Public squares,
Out-lots.

After this survey was completed, then the deputy was required to prepare a plat "exhibiting in connection with the lines of the public surveys, the exterior lines of the whole village."

Not only must the plat show the exterior lines of the whole village, but also

Squares,
Individual lots,
Public lots,
Out-lots,
Vacant in-lots and out-lots,
Reservations.

The Indian Reserve appears on the plat within the exterior lines of the village.

See Letter of Instructions, Record, pp. 96, 97, 98.
Defendant's Exhibit "6," Map of Village.

The register and receiver, in their report, say, under the head of streets and public squares:

"As much as the appearance and convenience of the village seem to require it, we have felt authorized to lay out new or widen all streets, or change the course of old and established streets where they have materially conflicted with private claims; but outside of the principal business portion of the village several streets of usual width have been located and surveyed as well, appeared from and on the plat of the village, and which will be an advantage both to the appearance and interests of the village as well as to the out and in-lots, to be sold for the benefit of the town.

"One public square of respectable size has been reserved and one public burying ground, the location and extent of which will be seen on the plat."

Record, p. 102.

It is not contended that in 1859, the village of Sault Ste. Marie was incorporated, because the act of incorporation was repealed in 1851; but the lands which were included in the boundaries of the village, in 1849, were then selected as a site for a town.

This selection preceded the incorporation, and was by actual settlement and occupancy. The laws of 1841 and 1844 did not contemplate any selection excepting that based on occupancy and settlement.

Cash Appellants, 6 Mich., 204-205.
5 Stat. at Large, pp. 657, 456, Sec. 10.

This selection by occupancy and settlement was before the act of incorporation, and the repeal of the act of incorporation did not change the occupancy or settlement, or selection of a town site. There is no abandonment shown, but a steady, continued growth of the town.

Both the northeast and northwest quarter of section six (6), containing within their limits the "Indian Reserve," outside of the Reserve, were actually settled and occupied for the purposes of trade and not agriculture.

The village of Sault Ste. Marie had, in 1858, 1859, and 1860, a population of over one thousand (1,000) inhabitants, of whom three or four hundred resided in the vicinity of Water street.

Record, page 45.

Water street was in the northeast quarter of section six (6), and was occupied mostly for business purposes; and on the north side there were from fifteen to eighteen business houses.

Record, pages 43-46.

Indians were living on part of the "Indian Reserve" in their houses. Indians were voters (Record, p. 28), and these Indians carried on their trade of fishing at the rapids and sold fish to passing boats and all who wanted to buy. They never raised anything there.

Record, pages 22, 23, 44.

The land was not agricultural land (Record, p. 44). It was covered with stone and rock (Record, p. 57). There is no evidence to the effect that the lands were agricultural lands.

The northeast fractional quarter ($\frac{1}{4}$) and the northwest fractional quarter ($\frac{1}{4}$) of section six (6), town forty-seven (47) north, range one (1) east, long before 1859, the time of Adsit's claim, had been broken in upon by Private Land Claims and claims under the act of September 26th, 1850.

Private Land Claims three (3) and four (4), and Village Lot three (3) were outside of the Indian Reserve, but were within the limits of the northwest quarter ($\frac{1}{4}$) of section six (6).

Testimony of Surveyor Carleton, Record pp. 54, 55.

It was impossible, for these reasons, in 1859, for Adsit to purchase, or pre-empt by legal subdivision or otherwise, the tracts including the Indian Reserve.

Counsel for the plaintiff in error (Brief, p. 26) narrows down the claim of defendant in error that the legal subdivisions of which the Indian Reservation were a part, were occupied for purposes of trade.

The claim of the defendant in error is not only that the Indians were traders, but the Indian Reservation was about equally divided, one part lying in the northeast quarter of section six, and the other part lying in the northwest quarter of section six, and each of these quarter sections, outside of the Indian Reservation, was occupied by white people engaged in trade and commerce; and one of the principal streets, to-wit, Water street, which was lined with stores, saloons, hotels, and warehouses, was in the northeast quarter of section six, so that at least part of the legal subdivisions was devoted to the purposes of trade; and the occupation of part of the legal subdivision for the purposes of trade exempted the whole of the legal subdivision from pre-emption.

The estoppel asserted by the plaintiff in error, on page 26 of brief, is very easily disposed of. The controversy between the defendant in error and the village of Sault Ste. Marie was not whether the Indian Reservation was a town site, but whether it was subject to the provisions of the act of September 26th, 1850, 9 Statutes, 469.

Secretary Teller, in stating the claim of the village, says: "The village of Sault Ste. Marie claims that the tract in question is subject to the provisions of the act of September 26th, 1850 (9 Statutes, 469), and should be sold as a vacant lot under section 9 of that act, and the entire amount of the sale be paid to the authorities of said village, to be expended in the improvement of streets, and the erection of public buildings, as provided in section 10 of the act."

V.

The laches of the complainant from 1860 to 1888, a period of twenty-eight years, is a complete bar to his claim.

Courts of equity will refuse relief where no statute bar exists, on general principles, when a party has slept on his rights; and defendant may take advantage of objections in analogy to the statute of limitations, upon the ground of laches, by way of demurrer, or he may raise the question under an answer.

Campau vs. Chene, 1 Mich., 410.
Highstone vs. Franks, 93 Mich., 57.

The rule laid down in each of the above Michigan cases is

"If the complainant has any ground of exception within the statute to prevent the bar, or ground to rebut the presumption arising from length of time, it should be stated in the bill. * * * If a complainant merely states a claim founded on such a distance of time that the Court, upon the analogy it has adopted, with respect to the statute of limitations, will refuse to assist, he may then be considered as having stated himself out of court, and he may be told that, if any peculiar circumstances existed in his case, which would have entitled him to relief, he ought to have brought them forward upon the record."

Highstone vs. Franks, 93 Mich., 57.
See also Bangs vs. Stephenson, 63 Mich. 661.

Even in ejectment in Michigan, it is not necessary to plead the statute of limitations.

Miller vs. Beck, 68 Mich. 76.

In Badger vs. Badger, 2 Wallace, 94, in speaking of the excuses for laches, it was held: "The party who makes such appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of the matters alleged in his bill; otherwise, the Chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations, contained in the answer."

See also Felix vs. Patrick, 145 U. S. 317.
Halstead vs. Grinnan, 152 U. S. 412.

The complainant sought to comply with this rule in the 5th paragraph of the bill of complaint, and to excuse his laches by stating that the United States retaining the title to the said lands left him without any remedy by application or proceedings in the courts, until on or about 1882.

It has been the law of Michigan before and from the time it became a State until the present time that a certificate of purchase of public lands entitles the holder to bring ejectment.

2 How. Stats. Sec. 7532. Appendix to this Brief No. 4.
Fisher vs. Hallock, 50 Mich., 463.

There is no doubt as to the power of the State to pass a law authorizing purchasers of lands from the United States to prosecute actions of ejectment upon certificates of purchase.

Bagnell vs. Broderick, 13 Peters, 436, 450.
Langdon vs. Sherwood, 124 U. S. 74.
Wilcox vs. Jackson, 13 Peters, 509.

In the case of Wilcox vs. Jackson, an action of ejectment was brought in the State court based on a register's certificate of purchase. The Court, after deciding that the plaintiff had no title, discussed a law of the State of Illinois, similar to the Michigan statute, and held that the United States, not having parted with a consummate legal title by issuing a patent, exhibited a better title than the claimant; but the Court says, on page 516, "Where that was not the case, but the suit should be against any person not having the right of possession or against a trespasser —these are the kinds of cases in which it would seem to us, by the proper construction of the act, that it was intended to operate."

Now, down to 1881, the United States had no occasion to use or be in actual occupancy of the Indian Reserve.

From the time of the completion of the canal in 1855 to 1881, the State officials were in charge of the canal and appurtenances. The board of control, in 1881, were authorized to transfer the canal to the United States.

Public Acts of Mich., 1881, No. 17; Appendix hereto, No. 5.

The complainant, or Adsit, could therefore have appealed to the State courts at any time from 1859 to 1881 and brought ejectment against State officers, Indians, or private persons, trespassing on the Indian Reserve, and this without any patent, if he had a valid certificate.

But for twenty-eight years he did no act which indicated ownership.

Complainant Spalding did not record his quit-claim deed until after defendant had located the scrip. He never took or demanded possession or brought ejectment. He never paid any taxes or made any improvements thereon, and yet he lived in the village of Sault Ste. Marie from 1846 down to the time of the commencement of the suit, with the exception of a few years.

Improvements have been made on the land in question in this suit of value of $50,000, in the shape of canal and electric lighting plant. The patent was issued to defendant Chandler in December, 1883, and it was not until November of 1888 that the bill was filed herein. Complainant's laches was held by Judge Grant in the court of original jurisdiction to be a bar to his recovery. This was broad enough to dispose of the whole case, and raises a serious question as to the jurisdiction of this court.

Jenkins vs. Loewenthal, 110 U. S., 222.
Kennebec R. R. Co. vs. Portland R. R., 14 Wallace, 23.

Laches and abandonment are not Federal questions.

Johnson vs. Risk, 137 U. S. 300.
Hale vs. Akers, 132 U. S. 554.

Complainant received a quit-claim deed from Adsit (Record, pp. 86, 87), and was not a bona fide purchaser.

In the case of Peters vs. Cartier, 80 Mich., 129, the Court say: "Under the cloak of quit-claim deeds schemers and speculators close their eyes to honest and reasonable inquiries, and traffic in apparent imperfections in titles. The usual method of conveying a good title—one in which the grantor has confidence—is by a warranty deed. The usual method of conveying a doubtful title is by a quit-claim. The rule is wise and wholesome which holds that those who take by quit-claim deed are not bona fide purchasers, and take only the interest which their grantors had. This rule is adopted in the United States Supreme Court, and in the courts of many of the States."

See also Dickerson vs. Colgrove, 100 U. S. 578.

Mr. Chief Justice Fuller, in a case of Mackall vs. Casilear, 137 U. S., 556, says:

"The doctrine of laches is based upon grounds of public policy, which requires for the peace of society the discouragement of stale demands; and where the difficulty of

doing entire justice by reason of the death of the principal witness or witnesses, or from the original transactions having become obscured by time, is attributable to gross negligence or deliberate delay, a court of equity will not aid a party whose application is thus destitute of conscience, good faith, and reasonable diligence."

Also, for strong expressions of the doctrine of laches, see

Naddo vs. Bardon, 51 Fed. Rep. 493.
Felix vs. Patrick, 145 U. S. 317.
Johnston vs. Standard Mining Co., 148 U. S. 860.

Supposing, however, the theory of plaintiff to be true, viz., that plaintiff could not be guilty of laches until 1882.

Bill of Complaint, Record page 2, par. 5.

Relief has been denied on the ground of laches, where the delay was only two years (Holgate vs. Eaton, 116 U. S., 33; Society Fonciere vs. Miliken, 135 U. S., 304). Where it was four years (Oil Co. vs. Maybury, 91 U. S., 587; Hayward vs. Bank, 96 U. S., 611; Credit Co. vs. Arkansas Cent. R. Co., 15 Fed. Rep., 46). Where it was five years (Harwood vs. Railroad Co., 17 Wall., 78; Davison vs. Davis, 125 U. S., 90). Where it was six years (Galliher vs. Cadwell, 145 U. S., 368). Where it was seven years (Brown vs. County of Buena Vista, 95 U. S., 157). Where it was ten years, and the suit was grounded on an express trust (Naddo vs. Bardon, 51 Fed. Rep., 493). Where it was fourteen years (Railroad Co. vs. Sage, 4 U. S., App. 160, 1 C. C. A., 256; and 49 Fed. Rep., 315). And where it was twenty-eight years (Felix vs. Patrick, 145 U. S., 317).

Lemoire vs. Dunklin County, 51 Fed. Rep. 492.

Plaintiff entered a protest in 1881 (Rec., p. 86), but from that time on to the filing of his bill in November, 1888, he makes no move to indicate a claim to the land. In the meantime a boom occurs and the village of Sault Ste. Marie becomes a city; land becomes very valuable, and the tract in question attains a value, with improvements, of over one hundred thousand dollars.

Without protest he sees the government officers moving the building containing the engineer's office (Rec., p. 37) from the canal site to the southeast corner of the Indian Reserve. He offers no excuse in his bill of complaint for six years' laches. Six years, during which a city requiring for its lighting and manufactures an electric plant, costing over fifty thousand dollars, grows up before his vision.

The courts were open to him. He lived in the village and city. He knew of the building of the electric light plant (Rec., p. 29), and when it is finished he files his bill. He had invested a dollar, and asks for a hundred thousand dollars.

He testifies that his want of funds was the only reason he took no legal proceedings (Rec., pp. 30, 58).

Poverty or pecuniary embarrassment is not a sufficient excuse for postponing the assertion of his rights.

McVicker vs. Filer, 31 Mich. 308.
Campau vs. Van Dyke, 15 Mich. 371.
Washington vs. Opie, 145 U. S. 214.
Naddo vs. Bardon, 51 Fed. Rep. 493.
Helfenstein vs. Reed, 62 Fed. Rep. 214.

It is respectfully submitted that the decree of the Supreme Court of the State of Michigan be affirmed.

JOHN H. GOFF,
Counsel for Defendant in Error.

APPENDIX No. 1.

Act No. 38.

An Act to provide for the construction of a Ship Canal around the Falls of St. Mary.

Section 1. The People of the State of Michigan Enact: That the act of Congress, entitled "An Act granting to the State of Michigan the right of way and a donation of public land for the construction of a ship canal around the Falls of St. Mary, in said State," approved August 26, 1852, is hereby accepted, and all conditions expressed in said act are hereby agreed to, and made obligatory upon the State of Michigan.

Sec. 11. The said commissioners, in entering into the contract for the construction of said canal, shall provide that the railroad at present existing across the Portage be in no way unnecessarily interrupted during the progress of the work; and said commissioners shall have the power to decide the necessity of any interruption; and the said commissioners may, at the expense of the said railroad company, re-locate said railroad if they shall deem it necessary to aid and promote the construction of said canal.

This act shall take effect immediately.

Approved February 5, 1853.

Session Laws, 1853, pages 48 and 51.

APPENDIX No. 2.

Act No. 255.

An Act to Incorporate the Village of St. Mary.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Michigan: That all the citizens of this State, inhabitants of, and included within the following corporate limits, viz.: Commencing at the northeast corner of the military reserve, held by the United States, at a point where it touches the St. Mary; thence south, one mile; thence due west, two miles; thence due north, one mile, to the said river St. Mary; and thence easterly, following the meanderings of the same, to the place of beginning, be, and the same are hereby ordained, constituted, and declared to be, from time to time, forever hereafter, a body corporate and politic in fact and in name, by the name of "the president, trustees, and citizens of the village of St. Mary," and by that name they and their successors forever, shall, and may have perpetual succession, and shall be persons in law, capable of suing and being sued, pleading and being impleaded, in all suits of whatever nature soever, and also to purchase, hold, and convey any estate, real or personal, and may have a common seal, and may change and alter the same at pleasure, and shall be citizens of said village.

Session Laws, 1849, pages 336-337.

APPENDIX No. 3.

Act No. 31.

An Act to Repeal an Act to Incorporate the Village of St. Mary, Approved April second, one thousand eight hundred and forty-nine.

Section 1. The People of the State of Michigan Enact: That an act to incorporate the village of St. Mary, approved April second, one thousand eight hundred and forty-nine, be and the same is hereby repealed.

Sec. 2. This act shall take effect immediately.

Approved March 11, 1851.

Session Laws, 1851, pages 30 and 31.

APPENDIX No. 4.

Section 1. Be It Enacted by the Legislative Council of the Territory of Michigan: That certificates of the purchase of public lands, signed by the receiver, shall be evidence in any court in this territory, that the possession of the lands described in said certificate or certificates, is in the person or persons, his, her, or their heirs or assigns, holding said certificate or certificates, as against any person or persons, not having a better title to such land than actual possession.

2 Howell's Ann. Stats. Sec. 7532.
Laws, 1834, page 37.

APPENDIX No. 5.

Act No. 17.

An Act to Authorize the Board of Control to Transfer the Saint Mary's Falls Ship Canal, with the Property Belonging to the same, to the United States.

Preamble: * * * * * *

Section 1. The People of the State of Michigan Enact: That the board of control of the Saint Mary's Falls Ship Canal be, and hereby is authorized and directed to transfer the said canal and the public works thereon, with all its appurtenances and all the right and title of the State of Michigan in and to the same, to the United States, in accordance with (the) provisions of the above mentioned clause; Provided, That this cession is upon the express condition that the State of Michigan shall so far retain concurrent jurisdiction with the United States over the Saint Mary's Falls Ship Canal, and in and over all lands acquired or hereafter acquired for its use; that any civil or criminal process issued by any court of competent jurisdiction, or officers having authority of law to issue such process, and all orders made by such court, or any judicial officer duly empowered to make such orders, and necessary to be served upon any such person, may be executed upon said Saint Mary's Falls Ship Canal, its lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid.

2 How. Annotated Stat., sec. 5502.
Public Acts of Mich., 1881, Act No. 17.

Supreme Court of the United States.

OCTOBER TERM, 1895.

WILLIAM P. SPALDING,
PLAINTIFF IN ERROR,
vs.
WILLIAM CHANDLER.

No. 86.

SLIP OF CITATIONS OF DEFENDANT'S COUNSEL.

As to Indian Reservation.
United States *vs.* Carpenter, 111 U. S. 347.

The survey of 1845.
Bishop of Nesquelly *vs.* Gibbon, 158 U. S. 167.

Legal subdivision.
Starke *vs.* Starrs, 6 Wall. 402, 419.

Necessity of Declaratory Statement.
Lansdale *vs.* Daniels, 100 U. S. 113.
Whitney *vs.* Taylor, 158 U. S. 85.

Book 7.
Act of February 21, 1823.
U. S. Stats., Vol. 9, p. 469.
U. S. Stats., Vol. 4, p. 260.
U. S. Stats., Vol. 3, p. 724, Sec. 5.

See Land Laws of U. S. Local and Temporary. Vol. 1, pp. 195, 199.

American State Papers, Vol. 5, p. 253–270. Public Land. County of Michilimacinac organized 1818.

Territorial Laws of Michigan, Vol. 1, p. 325–326.

Chippewa County, A. D. 1827.

Territorial Laws of Michigan, Vol. 2, p. 295.

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